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Supreme Court, U.S.
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In The
Supreme Court of the United States

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JOHN HAMILTON, JOHN HAMILTON TRUSTEE OF THE JOHN L. HAMILTON RETAINED ANNUITY TRUST, JOHN HAMILTON, JR., JEREMY HAMILTON, MICHAEL HAMILTON, JO-BET, INC. D/B/A HENRY THE VIII SOUTH, A MICHIGAN CORPORATION. THE GARTER BELT, INC., D/B/A LEGG'S LOUNGE, A MICHIGAN CORPORATION AND HAMILTON'S BOGART, INC D/B/A BOGART'S JOINT, A MICHIGAN CORPORATION,
Petitioners,

v.

CITY OF ROMULUS, MICHAEL ONDEJKO, VAN BUREN TOWNSHIP, MARC ABDILLA, BRYCE KELLEY, CITY OF INKSTER, PAUL MARTIN, KENNETH BROWN AND ANTHONY ABDULLAH,
Respondents.

◆

Petition For A Writ Of Certiorari
To The United States Court of
Appeals For The Sixth Circuit

◆

PETITION FOR A WRIT OF CERTIORARI
with Appendix

◆

* J. Michael Southerland (P34455)
J. MICHAEL SOUTHERLAND, P.C.
944 South Main Street
Plymouth, MI 48170
734-455-0860

Counsel for Petitioners
**Counsel of Record*

February, 2011

Appellate Advisors 312 Walnut Street Suite 1600 Cincinnati, OH 45202
513-762-7626◆◆◆◆800-279-7417

QUESTIONS PRESENTED

1. WHETHER THE TRIAL COURT AND THE COURT OF APPEALS ERRED IN THE APPLICATION OF RULE 56 STANDARDS BY:

   A. REFUSING TO CONSIDER EXPERT TESTIMONY AS TO LIABILITY AND DAMAGES AND BY DISMISSING THE TESTIMONY AS SPECULATIVE AND ARGUMENTATIVE, WITHOUT ANALYSIS OR EXPLANATION;

   B. WEIGHING EVIDENCE AND MAKING CREDIBILITY DETERMINATIONS;

   C. *SUA SPONTE* NARROWING THE NATURE OF THE CONSPIRACY ALLEGED BY PETITIONERS IN ORDER TO REACH A CONCLUSION THAT NO DAMAGE FLOWED TO PETITIONERS FROM THE JUDGE DEFINED CONSPIRACY.

LIST OF PARTIES

PLAINTIFFS

The parties below are listed in the caption.

a. The Plaintiffs/Petitioners are:

1. The following individuals: John Hamilton ("Hamilton") individually, and as Trustee of the John L. Hamilton Retained Annuity Trust, and Hamilton's sons, John Hamilton, Jr., Jeremy Hamilton and Michael Hamilton.

2. Hamilton owns the stock in the 4 corporations which are also Appellants: Jo-Bet, Inc. which operates a bar named Henry the VIII South ("Henry's South"); The Garter Belt, Inc. which operates a bar named Legg's Lounge ("Legg's") in VBT; Hamilton's Henry the VIII Lounge, Inc. ("Henry's") which operates a bar named Henry the VIII Lounge in Inkster and Hamilton's Bogart, Inc. which operates a bar named Bogart's Joint ("Bogart's"), both in Inkster.

b. The Defendants/Appellees are:

1. "VBT Defendants": Van Buren Township ("VBT"), and officer Marc Abdilla ("Abdilla") and VBT official, Bryce Kelley ("Kelley").

2. "Romulus Defendants": City of Romulus ("Romulus") and officer Michael Ondjeko ("Ondejko").

3. "Inkster Defendants": police officers, Paul Martin ("Martin"), Kenneth Brown ("Brown") and Anthony Abdullah ("Abdullah").

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REASONS FOR ALLOWANCE OF THE WRIT

REVIEW IS WARRANTED TO INSTRUCT LOWER COURTS AS TO THE PROPER APPLICATION OF RULE 56 STANDARDS, PARTICULARLY IN UNPOPULAR CAUSES. PETITIONERS ARE FOUR TOPLESS ENTERTAINMENT BARS. THE TRIAL COURT DISMISSED RELEVANT EVIDENCE AS TO 42 U.S.C. ¶1983 VIOLATIONS SHOWING REPEATED AND CALCULATED POLICE MISCONDUCT WITHOUT ANALYSIS. RELEVANT CASE LAW WAS CITED, BUT NOT APPLIED TO THE FACTS OF THE CASE. THE STRENGTH OF THE LAW IS ESTABLISHED BY ITS EVEN HANDED APPLICATION TO UNPOPULAR CAUSES. BY THE SAME TOKEN, IT IS WEAKENED BY THE SUMMARY JUDGMENT OF CASES THAT SHOULD RIGHTFULLY BE DECIDED BY JURIES.

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Appendix C - Judgment of U.S. District Court, E.D. of Michigan, Southern Division (R.336) Dated August 26, 2009

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Appendix F - Memorandum and Order of U.S. District Court, E.D. of Michigan, Southern Division (R.333) Dated August 18, 2009

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OPINIONS BELOW

The initial opinion of the U.S. District Court, E.D. of Michigan, Southern Division was entered on August 24, 2009. The VBT, Romulus and Inkster Defendants filed motions for Summary Judgment (Dkt. #s 251 (Romulus), 252 (Inkster), 255 (VBT)). The Trial Court denied oral argument on the motions (Apx. F, Dkt. #333, Order) and decided the matter on the briefs. The Court, in two separate opinions, granted summary judgment and dismissed the claims against the VBT and Romulus Defendants (Apx. F, Dkt. #333) and later, against the Inkster Defendants (Apx. D, Dkt. #335).

On November 12, 2010, the Sixth Circuit Court of Appeals affirmed the trial court's orders of summary judgments (Apx. A).

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1). Subject matter jurisdiction in the District Court was based on 28 U.S.C. §1331, with supplemental jurisdiction to adjudicate state-based claims conferred by 28 U.S.C. §1367. After the District Court Judgment, Appellants filed a timely Notice of Appeal (Dkt. #338) to the Sixth Circuit

Court of Appeals. The appeal of right was granted by the Sixth Circuit pursuant to FRAP 4(a)(1)(A).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 USC §1983. (Apx. G)

STATEMENT OF THE CASE

Petitioners claim 42 USC §1983 violations and pendent state law claims against the Defendant municipalities, police officers and supervisor.

REASONS FOR ALLOWANCE OF THE WRIT

I. THE REVIEW IS WARRANTED TO INSTRUCT THE LOWER COURTS TO REFRAIN FROM OFF-HANDEDLY DISMISSING MATERIAL EVIDENCE SUPPORTIVE OF PLAINTIFFS' CASE BY LABELING EXPERT TESTIMONY AS SPECULATIVE OR ARGUMENTATIVE.

There is an inherent tension between the Constitutional right to a trial by jury and FRCP 56, which is designed to ensure that there is sufficient evidence to submit a claim to a jury. Summary Judgment is inappropriate where a "reasonable

juror" considering the evidence could find for the Plaintiff *Sigley v. Parma Heights*, 437 F.3d 527, 536 (6th Cir, 2006) reh and reh en banc denied. In this appeal, the lower courts have overstepped the boundaries of FRCP 56 and invaded the exclusive province of the jury to dismiss Plaintiffs' claims; these claims are supported by material evidence from which a reasonable juror could find for the Plaintiffs.

In determining whether material fact questions exist for the purposes of a Rule 56 motion, the Courts have cautioned trial courts that:

> [c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.... The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor. [*Russo v. City of Cincinnati*, 953 F2d 1026, 1041-2 (1992); citation omitted].

See also, *Kenney v. Swift Transp., Inc.*, 347 F.3d 1041, 1045-6 (8th Cir, 2003) (In rejecting Plaintiff's version of facts, the court erred in making credibility determination and weighing the evidence); *See Sigley v. City of Parma Heights*, 437 F.3d 527 (6th

Circuit) *supra* at 536. ("The district court could only [grant summary judgment] by resolving all factual issues *against* the Plaintiff. [T]his type of determination should be reserved to the jury, not the district court.").

Rule 56 motions are not typically the appropriate vehicle for deciding civil rights and constitutional claims because the claims require an inquiry into state of mind or intent, and particularly so where the case is complex. Wright, Miller and Kane, 10B *Fed. Prac. & Proc., Civ 3d* § 2732.2; footnotes omitted; See also, *Weberg v Franks*, 229 F3d 514, 528 (6th Cir., 2000) ("Rarely in a conspiracy case will there be direct evidence of an express agreement among all the conspirators to conspire, . . . circumstantial evidence may provide adequate proof of conspiracy."); *Canderm Pharmacal, Ltd. v. Elder Pharmaceuticals, Inc.*, 862 F.2d 597, 603 (6th Cir,1988)("It is difficult to sort out the factual aspects . . . , and such sorting is necessary to a determination of who is at fault . . .. [T]he judge, in effect, decided the most material facts in the case."); *Leonard v. Robinson*, 477 F.3d 347, 353 (6th Cir, 2007) (court erred in granting summary judgment when it decided inferences of police misconduct against non-movant).

The Courts below ignored a vast body of evidence from which a reasonable jury could have found 42 USC §1983 liability and a conspiracy to violate Plaintiffs' constitutional rights. The Courts gave no consideration to direct and circumstantial evidence of selective enforcement, improper police practices and procedures and a constitutionally suspect forfeiture agreement and the prosecution that resulted from the agreement. Plaintiffs' police procedures expert, Michael Levine, carefully reviewed and considered the evidence and found Defendants' actions violated accepted standards of police conduct and, partly because of their sheer magnitude, created clear inferences of joint conduct to destroy Plaintiffs' businesses. The Courts below ignored most of the expert's findings, and, as to the scant portion it considered, simply dismissed them as "subjective and argumentative".

Are the lower courts empowered to disregard a 428 page report and sworn deposition testimony of a police procedures expert of 43 years experience (without first conducting a *Daubert*[1] hearing) based on the courts' subjective belief that the opinion was

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[1] *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).

"conclusory and argumentative?"[2] The qualifications of Mr. Levine as an expert on police matters are beyond reproach.[3] Mr. Levine's "subjective"

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[2] Apparently, the trial court believes that any evidence which supports a defendant's liability is "argumentative" and on that basis, is not to be considered. If that were the correct standard, no plaintiff would survive an FRCP 56 motion.

[3] As can be seen from the evidence recited above, Appellants supported the exhibits and factual assertions with the analysis and detailed findings of police procedures expert Michael Levine (Dkt. #s265-45 through 265-47; Levine report filed as 3 separate entries). While at the Department of Justice, Mr. Levine participated in over 5000 major conspiracy investigations involving organized crime, including RICO investigations, money laundering and narcotics trafficking. For 10 years at the DEA, Levine was an Internal Affairs Investigator, including 7 years as a Senior Group Supervisor responsible for investigations regarding official corruption and violations of standards of conduct and requiring proficiency in the use of manuals and Standard Operating Procedures. For 3 years at the Justice Department, he was an Operational Inspector in the Office of Professional Responsibility. This required extensive training in eliable methods and rinciples of investigative file review. He has more than 30 years of experience as a Police Instructor in the areas of undercover tactics, informant handling procedures and narcotics investigations. He is certified as a New York State Police Instructor. He has been qualified as an expert on behalf of both law enforcement and

knowledge of police operations through the course of his long career was the reason for his hiring. Neither the parties, the attorneys or the courts have the requisite expertise in these matters. Mr. Levine testified that he performed the same analysis, and drew the same inferences, in this case as he would have if he performed his analysis on behalf of any of his municipal clients, the FBI or other law enforcement entity.

By way of example, on May 15, 2002 VBT and Romulus signed a joint investigation agreement ("JIA") specifically targeting the 1.6 million dollars of

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defense in both Federal and State Courts and has reviewed in excess of 250 case files as a consultant/expert. He was certified as an instructor in the Department of Justice Training Schools relating to undercover tactics and informant handling; these have been taught in Michigan since 1974. He also worked at the Bureau of Alcohol, Tobacco and Firearms investigating retail liquor establishments. (Dkt. #265-45, Levine Report, pp. 8-16). In forming his opinions, Levine carefully examined over 20,000 pages of Appellants' exhibits and depositions and countless hours of videotaped interviews (Dkt.# 265-45, Levine Report, pp. 19-41). He then prepared an exhaustive report identifying the appropriate standards of conduct, how the Appellees' conduct deviated from those standards, and the specific wrongdoing of the Appellees, all of which could permit a reasonable juror to find an unlawful motive by the Appellees. (*Id.* at 43-51).

Hamilton's money which had already been seized by VBT in a prior search. (Dkt. #265-44, JIA). It was agreed a racketeering and conspiracy investigation would provide the best possible grounds for forfeiting the already seized money. *Id.* No probable cause for such an investigation existed and VBT had not utilized any standard investigative techniques relating to RICO conspiracies in seizing the money. (Dkt. #265-45, pp. 97-101; Dkt. #265-46, pp. 2-4, Levine Reports).

Both of the lower courts dismissed the circumstances leading to "spoils sharing" agreement as typical police department sharing of resources. Both courts ignored Levine's testimony that such an agreement, *entered into after the fact with the sole purpose of "brain storming" to institute criminal prosecutions* which would permit retention of the money, was unheard of in his 43 years experience, including his 100 RICO prosecutions. Levine found that the lack of probable cause and failure to use standard investigation techniques to determine if a RICO investigation was warranted along with the express targeting of the money as the goal of a law enforcement operation, suggested that Defendants VBT and Romulus were engaged in an illegitimate law enforcement operation and was strongly

indicative of a misuse of police power for the purpose of financial gain. (Dkt. #265-45, pp. 97-101, Levine Report; Dkt. #265-46, pp. 2-4, 18-21 Levine Report).

Levine noted that the alleged racketeering investigation targeting Plaintiff was begun as a ploy, admitted to by Defendants VBT and Romulus, to justify the seizure of $1.6 million dollars (as well as other assets belonging to Plaintiff) and found that the overt acts--bogus undercover operations and a bomb threat--were committed by Inkster Defendants in furtherance of this fraudulent "RICO" investigation. Levine, after having supervised and/or reviewed in excess of 100 RICO prosecutions in his now 43 year career found that the evidence presented sufficient probable cause as to merit federal prosecution of Defendants for federal criminal RICO charges. He also identified specific overt acts committed by Inkster Defendants in furtherance of the conspiracy.[4]

Levine noted that the standards and guidelines in his report and testimony are drawn

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[4] Levine supplied a chart that culled the massive amount of materials he reviewed, clearly indicating 178 police acts as elements of probable cause, each supportive of multiple criminality and overt acts in furtherance of a conspiracy. (Dkt # 317, ex F).

from the United States Attorney General's guidelines, which can be found on the Department of Justice website. (Docket # 317, Ex E, at 157-158). Levine found that the Inkster Defendants' "characterization in all police reporting as a bomb threat was false." (*Id* at 113). Further, Levine testified that he relied upon evidence that an employee of Plaintiff identified Defendant Officer Abdullah on the video as the caller of the bomb threat. (*Id* at pps 114-115), that he relied on the testimony of a bar employee regarding the seizure of a videtape during the "bomb threat" investigation (*Id* at 117), and that the handling of the tape was substandard in that it was not reviewed right away as would be done in a bomb investigation, but rather put in a desk drawer. ("And their own testimony which says that he put the tape in the, in his desk drawer and didn't look at it, which is totally, again, as inconsistent as you can be with a bomb investigation") (*Id* at 119-120).

Levine stated that "the seizing of the tape, without it ever being evaluated by any investigative party as to the bomb threat, is obstruction of justice" (*Id* at 140). Further, evidence relied upon by Levine, in regards to the bomb threat, were the findings of Michigan Circuit Court Judge Sapala that the

Defendant Inkster officers' testimony was not credible. Lastly, Levine in both his report and deposition pointed out the dearth of investigation by Inkster into the bomb threat as evidence of their involvement in the conspiracy. (*Id* at p 99).

Levine's testimony regarding Inkster's acts, the unsigned investigative reports, and the fake bomb threat were the common motive of all the co-conspirators in a common time frame and the commonality of performance indicative of participation in a conspiracy (*Id* at 128). Levine rephrases this opinion as a long campaign of extortionate activity, under the guise of police powers. (*Id* at 128).

The lower courts' criticism that Levine was "conclusory" is also illusory. Levine is a trained investigator of RICO matters, conspiracies generally, and of police corruption specifically. Levine knew from experience that circumstantial evidence and evidence of parallel conduct are valid ways to prove the existence of a conspiracy. The courts agree. *Bell Atlantic Corp v Twombly*, 550 U.S. 544, 553-4; 127 SCt 1955, 1964 -1965; 167 LEd 2d 929 (2007); *Spadafore v Gardner*, 330 F3d 849, 853-4 (6th Cir 2003).

Absent a confession, Plaintiffs are forced to rely on circumstantial evidence to prove a conspiracy case, using the same analysis Levine would do in any probe of police corruption. Levine's report is carefully annotated to all of the evidence he reviewed in this case, which has been supplied as exhibits to the courts. If sworn testimony, affidavits, police reports, videotapes, voice recordings and the like are not enough direct evidence on which to base an opinion, then it would be impossible to prove any conspiracy case.

Levine's report merely outlines what inferences he would draw or actions he would take or recommend as an investigator of internal affairs officers when presented with the same set of facts he reviewed in this case. It was neither "speculative" or "conclusory". It was error for the trial court to weigh the evidence and deny Plaintiffs a jury determination.

II. REVIEW IS WARRANTED TO PREVENT LOWER COURTS FROM "RE-CASTING" PLAINTIFFS' ALLEGATIONS IN ORDER TO FACILITATE THE GRANT OF SUMMARY JUDGMENT.

Appellants alleged that the Appellees conspired to "put John Hamilton's bars out of

business." The Appellees knew this was Appellants' claim and the Court acknowledged this was the claim,[5] yet when it analyzed the claim, the court narrowed the nature of the claimed conspiracy. By doing so, the Court ignored the broader evidence of the conspiracy claimed by Appellants. Appellants alleged that the conspiracy caused the bars $13.6 million dollars in damages. The Court changed the nature of the conspiracy alleged by Plaintiffs to avoid consideration of all of the damages resulting from the broader conspiracy.

Appellants argued that the same unlawful acts that imposed §1983 liability on the Appellees likewise supported the claim that they had engaged in these activities with the "unlawful purpose" of interfering with the business operations of the 4 Appellant bars. The Court gave no consideration to this claim: it defined the Defendant VBT "wrong" as the "raid at Legg's," that because the raid was conducted pursuant to a search warrant there was no

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[5]The Trial Court acknowledged that this was Appellants' claim at the beginning of its Opinion (Dkt. #333, p. 5), restated it at the beginning of its "discussion" (*Id.* at 19-20), yet changed the nature of the conspiracy when it began its "analysis."

unlawful act, and because there was no unlawful act, there could be no interference with business relations.

It is the exclusive province of a Plaintiff to define its claims, it is not for the Court; claims should be "construed so as to do justice," not simply to avoid a jury trial. FRCP 8(a); 8(e). The Trial Court summarily dismissed Levine's 429 page report detailing the conspiracy as "highly subjective and argumentative" (Dkt. #333, Op. at 13, n. 6) and the circumstances of the Leggs raid and Kelley's involvement as "immaterial." (*Id.* at 25). This was the extent of its conspiracy analysis.

The Trial Court changed and narrowed the goal of the claimed conspiracy from that alleged by Appellants of "to put the John Hamilton bars out of business" in the case of VBT/Romulus into a conspiracy of "entering into an equitable sharing agreement" (Dkt. #333, Op. at 24). By redefining and narrowing the nature of the conspiracy, the Court treated the other evidence offered by Appellants of a broader objective of the conspiracy as simply irrelevant.[6] In the case of Defendants

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[6]The Court described the evidence as "immaterial." (Dkt #333, Op at 25).

VBT/Romulus,[7] the Trial Court examined only whether the "equitable sharing agreement" was an illegal or wrongful act (Dkt. 333, Op. at p. 24). It gave no consideration as to acts that were clearly intended to close Legg's and drive Plaintiff Hamilton out of business.

Defendant VBT clearly did not want a topless bar in its community. (Dkt. #265-39, pp. 11-13, Elg Dep.). To that end, Defendant VBT's Director of Development Kelley, as part of his revision of the Township's master plan, drafted SOB ordinances adopted in 1999 that were directed at and only enforced against Legg's. In drafting these ordinances, the only SOB he investigated was Legg's and, in attempting to enforce these ordinances, he acted outside his zoning authority and Defendant VBT had no licensing procedures to allow Legg's to comply. (Dkt. #265-24, p. 3, par. 2, Kelley Aff.; Dkt. # 265-25, pp. 4-7, Kelley Dep.; Dkt. #265-26, VBT Ord.; Dkt. #265-27, Kelley Ltr.; Dkt. #265-25, pp. 6-8, Kelley Dep.; Dkt. #265-28, p. 10, Abdilla Dep.; Dkt. #265-29,

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[7] The Trial Court gave no consideration as to whether the Inkster Defendants had engaged in a conspiracy, finding only that the claims against them should be dismissed because Appellants suffered no damages.

p. 3, Smolen Dep.). Defendant Kelley then filed an affidavit in Circuit Court as part of a lawsuit against Legg's for non-compliance, though his own enforcement officer told Plaintiff Hamilton that Legg's was in compliance. (Dkt. #265-30, Kelley Aff.; Dkt. #265-4, pp. 2-4, Hamilton Dep.; Dkt. #265-29, pp. 5-6, Smolen Dep.).

When the Court lawsuit failed to close Legg's, VBT tried to close Legg's through an extensive and unwarranted criminal investigation. On May 3, 2002, VBT seized 1.6 million dollars of Hamilton's money and through a sham racketeering investigation attempted to forfeit this money, obtain other proceeds and close the bar. (Dkt. #265-32, pp. 18-20, VBT File; Dkt. # 265-46, pp. 18-21, Levine Report; Dkt. #265-45, pp. 97-101; Dkt. #265-46, pp. 2-4, 18-21, Levine Reports). Defendant Kelley, as further evidence of his desire to close Legg's, was present at the May 3, 2002 search and he was there for no legitimate reason. (Dkt. #265-25, pp. 9-12, Kelley Dep.). As the lead investigator Defendants (Abdilla) and Kelley gave conflicting testimony as to his presence there and Defendant Kelley was not listed as being present in any of the official incident reports; this supports the inference that they were covering up the true purpose of the "criminal

investigation." (Dkt. #265-28, pp. 11-12, Abdilla Dep.; Dkt. #265-32, pp. 2-20, VBT File). Finally, the report submitted by Defendants VBT and Romulus investigators was false and based on perjured testimony and substandard investigative procedures. (Dkt. #265-46, pp. 97-101, Levine Report; Dkt. #265-47, pp. 2-132, Levine Report). The investigation was so substandard that the RICO charges against Plaintiff Hamilton were dismissed on a directed verdict and his 1.6 million dollars ordered returned. (Dkt. #265-54, Order; Dkt. #265-55, Order).

Additionally, the Court completely ignored the contacts Defendants VBT/Romulus had with Southgate and Inkster and the numerous investigations and searches they conducted outside their jurisdiction to target Plaintiff Hamilton's interests. (Dkt. #265-32, pp. 2-33, VBT File; Dkt. #265-33, pp. 2-3, VBT File; Dkt. #265-35, p. 26, VBT File). This was after both Defendants Southgate and Inkster had attempted to close Plaintiff Hamilton's bars in their jurisdictions. (See discussion, *supra* at pp. 22-26 and pp. 38-41).

Appellants alleged that the conspiracy damaged Appellants by a dramatic loss of revenue to Appellants' 4 bars (Dkt. #265, Appellants' resp. to

VBT mot. for SJ; Exs. 63, 64, Landini expert report).[8] Instead of examining what damages flowed from the conspiracy as framed by Appellants, in the case of Defendants VBT/Romulus, the Trial Court framed the issue as what damages flowed from the "seizure of property" (Dkt. #333, Op. at 25) and in the case of Inkster Defendants, framed the issue as to what damages arose "out of the bomb scare incident." (Dkt. #335, Op. at 13).[9] The Trial Court held that the redefined claimed wrongs from the conspiracy did not cause damages to Appellants (Dkt #333, Op at 25;

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[8] Expert Kenneth Landini opines that the Appellants' bars lost $13.6 million dollars (Dkt. #265-76, Landini Report, p. 4).

[9] Defendant Inkster argued that Appellants' "**state tort law claims**" should be dismissed because there was no proof of damages directly from the bomb scare (Dkt #252, pp 35-36), but for obvious reasons, made no such argument as to the conspiracy claim. The Trial Court simply adopted this argument and applied it to Appellants' conspiracy claim. Of course, the scope of damages for a conspiracy is different from that of "state tort law claims."

Dkt #335, Op at 13).[10] This is the extent of the trial court's analysis.[11]

First, the Court erred in ignoring the breadth of the wrongful acts of the Appellees which damaged Appellants. The passing of the VBT SOB ordinances and the intensive criminal investigation, caused a dramatic loss of sales at Legg's. From 2000, the year after the SOB ordinances were adopted, through 2006, Legg's lost more than 9.5 million dollars from its operations. (Dkt #265-76, p. 6, Landini Suppl. Report). Additionally, Henry's South had more than 3.2 million dollars in losses. (Dkt #265-76, p. 6, Landini Suppl. Report).

Beyond the false bomb scare that Defendant Inkster used to illegally seize the video tape,

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[10] Incredibly, the Trial Court made this holding **without the Appellees ever having made this argument in any of their briefs.** As a result, Appellants had no notice of this issue and never had an opportunity to brief it. By then denying oral argument, the Trial Court denied Appellants any opportunity to address this issue. This is reversible error. See caselaw collected *supra*, p. 14, n. 3.

[11] The Trial Court devoted one sentence to the analysis: "[Appellants] have not established any cognizable damages arising from the seizure of the property sufficient to sustain a conspiracy claim." (Dkt #333, Op. at 25).

Defendants Martin, Brown and Adbulla filed false police reports and perjured themselves in an attempt to obtain MLCC violations against Henry's. Defendant Martin began his efforts to harm Plaintiff Hamilton in 1996 when he participated in a Wayne County's attempts to target Plaintiff Hamilton's businesses in Southgate and Inkster through undercover operations at Bogart's and Henry's South. (Dkt. #265-78, Wayne Cty. Pros. Memo; Dkt. #265-80, Ltr. to Hamilton's Bogart's; Dkt. # 265-12, MLCC Findings of Fact & Order). It was after the hearings on the 1996 Henry's South violations brought by Martin, that he threatened to "get Hamilton." (Dkt. #265-4, p. 13, Hamilton Dep.).

Second, the Court properly noted that monetary damages are not necessary to a conspiracy claim and that impairment to reputation, personal humiliation and mental anguish are sufficient damages, but determined that Appellants had failed to establish the existence of such damages (Dkt #335, Op at 13). The record established the following evidence of loss of reputation, personal humiliation and mental anguish: John Hamilton experienced the distress of a sham criminal prosecution, the seizure and holding of $1.6 million, police harassment and perjury, and the blocking of the sale of Henry's South,

and millions of dollars in lost sales, all causing him humiliation and anguish.

Third, the Trial Court's framing of the damages issue completely ignores settled law that a co-conspirator is liable not only for the damages caused by it, but also for the damages caused by its co-conspirators. *Canter, supra*, 188 FSupp 2d at 792 ("a conspirator is liable under §1983 for all acts taken in furtherance of the conspiracy, regardless of whether the conspirator directly participated in the act."); *William Inglis and Sons Baking Co. v. ITT Continental Baking Co., Inc.*, 668 F2d 1014, 1053 (9th Cir, 1981) *cert denied*, 459 U.S. 825; 74 LEd2d 61; 103 SCt 57 (1982); *Brown v. Brown*, 338 Mich 492, 503-4 (1953), *cert denied*, 348 US 816; 99 LED 644; 75 SCt 27 (1954).

Finally, the Trial Court completely ignored the damages report of Appellants' damages expert, Kenneth Landini, CPA (Dkt. #265-76, Landini Suppl. Report, p. 4). Mr. Landini has a BA in accounting and has been a certified public accountant for 28 years and has testified previously as an expert. (Dkt. 265-75, p. 9). He performed an exhaustive analysis of the losses suffered by Appellants' bars during the period of the conspiracy and concluded

Appellants suffered losses of $13.6 million dollars (*Id.* at p. 4).

The Trial Court examined only whether the discrete acts it identified and considered caused damage, not whether any damages flowed from the overall conspiracy. It should have determined whether any damages flowed from the conspiracy, which would have exposed all co-conspirators to those damages. This is reversible error.

CONCLUSION

For all the foregoing reasons, Petitioners respectfully request that the Supreme Court grant review of this matter.

Respectfully submitted,

S/ J. Michael Southerland
J. MICHAEL SOUTHERLAND, P.C.
J. Michael Southerland
Attorneys for Petitioners
944 S. Main Street
Plymouth, MI 48170
(734) 455-0860

APPENDIX

SIXTH CIRCUIT COURT APPEALS FILINGS:

Opinion,
filed 11/12/10 ..... A1 - A37

EASTERN DISTRICT OF MICHIGAN FILINGS:

Order Amending August 26, 2009,
Memorandum and Order,
filed 08/27/09 ..... B1 - B3

Judgment,
filed 08/26/09 ..... C1 - C2

Memorandum and Order,
filed 08/26/09 ..... D1 - D37

Judgment,
filed 08/21/09 ..... E1 - E2

Memorandum and Order,
filed 08/18/09 ..... F1 - F62

STATUE INVOLVED:

42 USC §1983 ..... G1 - G1

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION File Name: 10a0703n.06

No. 09-2196

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOHN HAMILTON, et al.,
Plaintiffs-Appellants,

v.

CITY OF ROMULUS, et al.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

Before: GILMAN and GRIFFIN, Circuit Judges; and ROSE, District Judge*

Rose, District Judge. The underlying matter is a civil rights case under 42 U.S.C. §§ 1983 and 1985(2) with pendant state-law claims. Plaintiffs/Appellants appeal grants of summary

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*The Honorable Thomas M. Rose, United States District Judge for the Southern District of Ohio, sitting by designation.

judgment to the Defendants/Appellees. For the reasons indicated below, we **AFFIRM** the judgment of the district court.

I. BACKGROUND

A. Factual Background

The Plaintiffs/Appellants are John Hamilton ("Hamilton") individually and as Trustee of the John L. Hamilton Retained Annuity Trust, and Hamilton's sons: John Hamilton, Jr., Jeremy Hamilton, and Michael Hamilton. Hamilton owns all of the stock offour (4) corporations, which are also Plaintiffs/Appellants: Jo-Bet, Inc., which operates a bar named Henry the VIII South ("Henry's South") in Southgate, Michigan; The Garter Belt, Inc. which operates a bar named Legg's Lounge ("Legg' s") in V an Buren Township ("VBT"); Hamilton's Henry the VII Lounge, Inc., which operates a bar named Henry the VII Lounge ("Henry's") in Inkster, Michigan; and Hamilton's Bogart, Inc., which operates a bar named Bogart's Joint ("Bogart's") in Inkster, Michigan.

The Defendants/Appellees are: VBT, VBT Officer Marc Abdilla ("Abdilla") and VBT Director of Planning and Development Bryce Kelley ("Kelley") (collectively the "VBT Defendants"); the City of Romulus, Michigan ("Romulus") and Romulus Officer Michael Ondejko ("Ondejko") (collectively the "Romulus Defendants"); and the City ofInkster, Michigan ("Inskter") Officers Paul Martin ("Martin"), Kenneth Brown ("Brown") and Anthony Abdullah ("Abdullah") (collectively the "Inkster Defendants").

The facts that follow are taken from the district court's orders that are being appealed. The facts presented in the district court's orders are taken from the parties' joint submission of material facts not in dispute.

1.

The parties, particularly Hamilton and VBT, have a very long and complicated history of conflict dating back to 1998. At a regular meeting on September 1, 1998, VBT's Board of Trustees adopted Resolution 98-34. The effect of this resolution was to suspend the submission or receipt of projects which would require site plan review, re-zoning, housing development, special approval use and the like, with certain exceptions, for a period of 182 calendar days running from September 2, 1998, through March 2, 1999 (the "Moratorium"). The purpose of the Moratorium was to assist in the revision and updating ofVBT's master plan and zoning ordinance. The parties disagree as to whether the moratorium was directed at Sexually Oriented Businesses ("SOBs").

During the Moratorium, VBT conducted a comprehensive review of its Master Plan and Zoning Ordinance and adopted a series of new SOB ordinances. All of the ordinances became effective by March 11, 1999.

By letter dated August 29,2000, Defendant Kelley informed Hamilton that Legg's was not in compliance with the new and revised SOB ordinances. Hamilton was directed to come into

compliance within thirty (30) days. VBT claims that Legg's refused to comply with the SOB ordinances, particularly the Nudity On Licensed Premises Ordinance because Legg's dancers continued to dance virtually naked, had illegal physical contact with patrons and engaged in a host of other prohibited activities.

Believing that Legg's was not in compliance with the applicable SOB ordinances, VBT sought a permanent injunction mandating Legg' s compliance. The permanent injunction was sought in Wayne County Circuit Court. The case is captioned as *Charter Township a/Van Buren v. The Garter Belt*, No. 00-036479, and is known by the parties as "*Legg's I.*" Legg's filed a counterclaim in which it sought to have the VBT SOB ordinances invalidated on constitutional grounds.

VBT prevailed in *Legg's I.* Specifically, the trial court determined that the SOB ordinances in question were without legal or constitutional infirmity and permanently enjoined Legg's from violating the ordinance entitled "Nudity On Licensed Premises." The trial court's decision was affirmed on appeal and the Michigan Supreme Court denied Legg' s' application for leave to appeal. The United States Supreme Court then denied Legg's' petition for writ of certiorari. Thus ended *Legg's I.*

Shortly after *Legg's I* was filed, The Garter Belt, Inc. unsuccessfully sought removal of *Legg's I* to federal court. The Garter Belt, Inc. then filed a complaint in federal court in the Eastern District of Michigan, Case No. 00-60455 reassigned to Case No. OO-CV -75630. This case became what is known as

Legg's II. *Legg's II* was dismissed on abstention grounds. An appeal was upheld by this Court. Thus ended *Legg's II*.

2.

On May 11, 2000, there was a bomb scare at Henry's. The Appellants argue that the bomb scare was executed by Officers Brown and Abdullah, but the person or persons responsible for executing the bomb scare have never been identified.

At approximately 4:30 p.m. to 5 :00 p.m. on May 11, 2000, Elvie Gensoli ("Gensoli"), who was acting manager of Henry' s at the time, received a call notifying Henry's that there was a bomb threat against Henry's and that the bomb was to explode at approximately 9:00 p.m. that night. Approximately 20 minutes later, the Inkster Police Department arrived with a "bomb" dog. Brown advised Gensoli to have the patrons and dancers exit the bar. After a couple of delays while the "bomb" dog searched, Brown asked Gensoli, who had been asked to wait outside, to enter and give him her keys to the downstairs offices, which were locked.

Brown was given the keys and went downstairs. He returned in approximately 10 minutes with a video tape in his hand. Gensoli asked that the tape be returned, but Brown did not do so and put the tape in his police vehicle. Shortly thereafter, a second "bomb" dog arrived and, in a few minutes, Brown advised Gensoli that the second dog did not find anything.

Brown reviewed the tape and found nothing regarding the bomb threat. He placed the tape in his desk drawer for return to Henry's. However, Officer Martin took and reviewed the tape and filed a formal complaint with the Michigan Liquor Control Commission ("MLCC"), claiming that the tape showed violations of MLCC rules.

Hamilton complained that the tape was taken illegally. He was, however, advised, that the rules of evidence did not apply in Administrative hearings in the State of Michigan and that the tape could be used by the MLCC.

The videotape was used as evidence in connection with liquor-license-violation proceedings against Henry's before the MLCC. The Michigan Court of Appeals determined that the videotape was admissible in those proceedings. The Michigan Supreme Court denied leave to appeal, thus ending the litigation.

3.

On April 21, 2002, a customer named James D. Cable ("Cable") died while he was being entertained at Legg's. Following Cable's death, Wendy Pomerico ("Pomerico"), a Legg's dancer, reported to VBT's Department of Public Safety that Cable's body had been tampered with after his death. Pomerico also stated that she and other dancers were being forced by Hamilton to serve as prostitutes providing sexual favors to various Legg' s patrons and that, behind the scenes, Legg' s was a house of prostitution.

The VBT Police Department, with the aid of members of a special police task force from Romulus, began a full-scale investigation of illegal activity at and associated with Legg's. This investigation included the use of confidential informants who were solicited to engage in acts of fellatio, intercourse, and other sex acts by dancers at Legg's for cash. The investigation also relied upon undercover police officers who also were propositioned to engage in sex acts, including hands-on lap dances, for a fee.

On May 3,2002, VBT and Romulus police officers, in a cooperative effort, raided Legg's and an adjacent property pursuant to a valid search warrant. The search warrant was secured, in part, on Pomerico' s statements.

At some point on May 3, 2002, VBT Director of Planning and Development Kelley was notified of the raid. He arrived at Legg' s close to midnight after the warrants were served and while the police were still actively investigating. Kelley testified that he had never before appeared at a scene where the police were serving a warrant, but he appeared this time out of curiosity. He further testified that he walked through Legg's with his camera, which he always has with him.

Detective Louse Keele ("Keele"), who participated in the Legg's raid, testified that he may have informed Legg's customers and employees that a homicide was being investigated despite knowing that Cable's death had been classified by the coroner as "natura1." However, the written reports regarding the Cable incident classify the "nature of the

incident" and "offense" as "Prostitution/Wrongful Death" and "death investigation" respectively.

During the raid, VBT and Romulus police officers seized certain property as part of their ongoing investigation into criminal activity at Legg's. Included in the property seized was $1.6 million in cash removed from a safe located inside a residence adjacent to Legg's. Billy Martin, Hamilton's nephew, lived in the residence.

Following the raid, Legg's, along with various individuals whose property had been seized, filed a lawsuit in Wayne County Circuit Court against VBT, its police department, Officer Abdilla, the City of Romulus and Officer Ondejko. This case was captioned *Martin, et al., v Charter Township a/Van Buren, et. al.*, No. 02-218416. The *Martin* plaintiffs alleged that the search warrant was defective and was defectively executed, they alleged negligence and defamation, and they sought the return of property seized during the raid.

Ultimately the *Martin* plaintiffs were unsuccessful. On December 18, 2002, the trial court issued an order denying the return of the seized property and dismissing all claims against each of the *Martin* defendants. The *Martin* plaintiffs then filed a Claim of Appeal with the Michigan Court of Appeals, which was eventually dismissed by stipulation of the parties. Thus ended *Martin*.

4.

Soon after the raid, Abdilla, on behalf of VBT, contacted Ondejko, of the Romulus Police

Department, to discuss a request made by VBT for assistance in the Legg's investigation. VBT requested the assistance because Romulus, unlike VBT, had a pre-existing special investigations unit ("Sill"). Ondejko, who is now retired, was a member of Romulus's Sill. Preliminary issues discussed between VBT and Romulus included recommendations regarding potential forfeiture of the seized money; the complexity of the investigation; and the time commitment, manpower and expense that would be incurred to effectively conduct the investigation.

On May 9, 2002, Romulus Police Chief Charles Kirby authorized Ondejko and other members of Romulus's Sill to assist VBT in the investigation of the Legg's matter. On May 15, 2002, the VBT and Romulus Police Departments entered into a written "equitable sharing" arrangement. The body of the agreement is as follows:

> On May 9,2002, I met with your detectives at their request, to give assistance on their investigation into the case involving LEGG'S LOUNGE [sic]. (Case 022110). They informed me that there was approximately 1.6 million in cash seized from the residence of a bar manager and were looking for guidance on keeping the money.
>
> We discussed the methods of investigation that would be needed to provide your Department with the best

grounds for forfeiting this currency and the large potential for additional seizures if these methods were followed. I believe a racketeering and conspiracy investigation will provide that foundation. To conduct such an investigation will require the efforts of more than two detectives and the training, equipment and experience that our Department can afford you. At the conclusion of the meeting, you contacted Chief Kirby and my unit was given the permission to join your detectives in this endeavor. Chief Kirby and the City of Romulus only ask that we enter into an equitable sharing agreement. With your permission we would like to make the following request.

The City of Romulus will receive ten percent (10%) of the net proceeds derived from the forfeiture or other consent agreement in the settlement involving the approximately 1.6 million seized from 3918 Merriman in the City of Wayne, Mi. This percentage will be based on the amount left after prosecution costs are determined and will be in addition to actual cash expenditures by Romulus Sill on behalf of the Van Buren Township Police investigators. Receipts will be provided explaining those expenses.

> Further, the City of Romulus will receive forty percent (40%) and Van Buren Township sixty percent (60%) of all proceeds from seizures that occur after our commitment to this joint investigation was made on May 9,2002. This figure also will be based on net proceeds minus prosecution costs.

This letter agreement was written by Ondejko and addressed to Christopher Elg, the Director of VBT's Police Department. Ondejko testified that the Romulus Police Department would have assisted VBT absent the equitable sharing agreement, that equitable sharing agreements, such as this one, are common practice, and that Romulus had similar agreements with the State Police DRANO units and the DEA.

The defendants proffered Daniel J. Grant, an expert witness, who testified that equitable sharing agreements, such as this one, are common when multiple agencies are involved, and these agreements are authorized by both Michigan and federal statutes. On the other hand, the plaintiffs proffered Michael Levine ("Levine"), an expert witness, who testified that the contents of this equitable sharing agreement are "strongly evincive [sic] of a misuse of police power, authority and force. . .." Levine also proffers that this agreement makes no mention of any apparent legal grounds for seizure, as a trained reviewer would expect, and, instead, "makes apparent that the money is the target of the law enforcement action and not it's [sic] natural

bi-product." In any case, the parties agree that it is not unusual for law enforcement officers to share resources, including personnel, with neighboring municipalities.

On June 11, 2002, the Forfeiture Unit of the Wayne County Prosecutor's Office filed a forfeiture complaint in Wayne County Circuit Court seeking forfeiture of the property seized during the May 3,2002 raid. This case was eventually dismissed with prejudice by stipulation of the parties and the money returned to Hamilton, minus $6,490 in costs.

5.

On August 6, 2002, the Wayne County Prosecutor's Office filed a complaint in Wayne County Circuit Court for abatement of nuisance, seeking to padlock Legg's. This case was dismissed with prejudice by the parties with the finding that the alleged nuisance activity had been abated.

6.

On August 16, 2002, misdemeanor complaints charging prostitution were issued against eleven (11) Legg's dancers, including Samantha Bates ("Bates"). On September 16,2002, Bates filed a Complaint for Declaratory Judgment, Violation of Civil Rights, Permanent Injunction and attorney fees in the United States District Court for the Eastern District of Michigan, the same court from which this appeal is taken. Bates challenged VBT's Nudity On Licensed Premises Ordinance on various constitutional

grounds, but lost when the court granted summary judgment in favor of VBT on *res judicata* grounds. On appeal, this Court affirmed the dismissal, *Bates v. Township of Van Buren*, 459 F.3d 731 (6th Cir. 2006), and the Supreme Court denied Bates's petition for a writ of certiorari, 550 U.S. 935 (2007). Thus ended *Bates*.

7.

On November 3, 2003, the Michigan Attorney General's Office brought state-law RICO charges in the 34th Judicial District against Hamilton and others. On June 14,2004, the trial court issued an order dismissing with prejudice the charges against Hamilton.

B. Procedural Background

In plaintiffs' Corrected Fourth Amended Complaint ("CFAC")[1], the operative complaint, the plaintiffs assert four claims against the Romulus Defendants: (a) conspiracy; (b) First Amendment violations; (c) conspiracy to interfere with civil rights; and (d) tortious interference with a business expectancy. Plaintiffs assert the same four claims against the VBT Defendants plus claims for

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[1]The Corrected Fourth Amended Complaint includes the City of Southgate, Southgate Mayor Susan Hall and Officers Lawrence Hall and Lawrence Lokuta as defendants. These defendants were subsequently dismissed pursuant to a stipulation. (Case No. 01-CV-74698, doc. #326.)

conversion and "taking." Plaintiffs assert six claims against the Inkster Defendants: (a) conspiracy; (b) First Amendment violations; (c) conspiracy to interfere with civil rights; (d) conversion; (e) "taking;" and (f) larceny.

The VBT, Romulus and Inkster Defendants each filed motions for summary judgment. The district court denied oral argument and decided the matter on the briefs. The district court, in two separate opinions, dismissed the claims against all of the defendants.

The first opinion was entered on August 18,2009, and granted summary judgment to the Romulus and VBT Defendants. The district court determined that the individual plaintiffs and the trust lack standing to assert a conspiracy claim or any other claim to redress injuries to the corporate entities. It then dismissed the First Amendment claims brought by the individuals, finding that their right to associate was not violated by any of the remaining defendants. The individual plaintiffs were not dismissed entirely at the time because their First Amendment claims against the Inkster Defendants had not yet been addressed.

The district court then granted summary judgment for the Romulus and VBT Defendants on the conspiracy claim because the plaintiffs offered no evidence of an agreement between Romulus and VBT to engage in unlawful action. In doing so, the district court found that the equitable sharing agreement is not an illegal agreement and that the plaintiffs did not establish any cognizable damages arising from

the seizure of property sufficient to sustain a conspiracy claim.

The district court next found that plaintiffs' conspiracy-to-violate-civil-rights claims against the Romulus and VBT Defendants failed because plaintiffs offered no evidence of any conspiracy involving the Romulus and VBT Defendants "to influence parties, witnesses, or jurors in federal court proceedings" or to impede, hinder, obstruct or defeat "the due course of justice." The district court also found that plaintiffs presented no evidence that the Romulus and VBT Defendants' actions were motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus."

The district court next found that plaintiffs' tortious-interference-with-business-relationship claims against the Romulus and VBT Defendants failed because the plaintiffs did not satisfy at least one of the elements of a Michigan tortious-interference-with-business-relationship claim. Specifically, the claims failed because the incident causing the alleged interference, the May 3,2002 raid at Legg's, was conducted pursuant to a lawful search warrant and thus was not a wrongful act or an act done with malice and unjustified in law.

The district court next found that plaintiffs' conversion claim against the VBT Defendants failed. The conversion claim failed because the May 3,2002, raid was conducted pursuant to a valid search warrant and the property was lawfully seized.

Finally, the district court found that plaintiffs' "taking" claim against the VBT Defendants failed because the alleged unconstitutional ordinance had

been declared to be constitutional and because the raid on Legg's and the associated seizure of property was lawful. The district court found that the "taking" claim appeared to be nothing more than the conversion claim recast.

The second opinion was entered on August 26, 2009, and granted summary judgment to the Inkster Defendants. The district court first dismissed the First Amendment claims brought by the individual plaintiffs because the individual plaintiffs claimed that their right to associate was violated by the MLCC and not by any of the other defendants who remained a party to the action.

The district court then granted summary judgment for the Inkster Defendants on the conspiracy claim because the plaintiffs failed to present any evidence of monetary or non-monetary damages that resulted from the alleged overt act, the bomb threat. The district court also granted summary judgment on the conspiracy-to-interfere-with-civil-rights claim because the plaintiffs presented no evidence thereof.

The district court next granted summary judgment on the conversion and "taking" claims. Summary judgment was granted on the conversion claim against Officer Abdullah because the record contains no evidence that Abdullah handled the video tape that is the subject of the conversion claim. This claim also failed against Officers Martin and Brown because plaintiffs did not establish any damages due to the alleged illegal conspiracy. Summary judgment was granted on the "taking" claim because the plaintiffs discussed the conversion and "taking"

claims as if they were one claim and did not discuss the "taking" claim separately.

Finally, plaintiffs' larceny claim against the Inkster Defendants was dismissed because larceny is a crime and not a private cause of action. The Plaintiffs/Appellants have now appealed the grants of summary judgment to the Romulus, VBT and Inkster Defendants. The Plaintiffs/Appellants do not appeal the district court's ruling that the individual plaintiffs may not assert claims on behalf of the corporate defendants. Plaintiffs/Appellants also do not appeal the dismissal of their 42 U.S.C. § 1985(2) claims, their conversion claims, their "taking" claims or their larceny claims.

II. JURISDICTION

This Court has jurisdiction to consider this appeal pursuant to 28 U.S.C. § 1291. Section 1291 provides for jurisdiction over appeals from all final decisions of district courts, and the decisions being appealed are final decisions of a district court. Finally, this appeal was timely filed pursuant to FRAP 4(a)(1)(A).

III. STANDARD OF REVIEW AND BURDEN OF PROOF

Plaintiffs/Appellants appeal the two orders granting summary judgment to the Romulus, VBT and Inkster Defendants. Thus, the standard of review is de novo. *See Johnson v. Karnes*, 398 F.3d 868,873 (6th Cir. 2005).

Summary judgment should be granted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine

issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). The court must view the evidence in a light most favorable to the non-moving party, the Plaintiffs/Appellants in this case, and draw all reasonable inferences in the non-moving party's favor. *Id.* To prevail, the non-movant must show sufficient evidence to create a genuine issue of material fact. *McLean v. 988011 Ontario, Ltd.*, 224 F.3d 797,800 (6th Cir. 2000).

An issue of fact is genuine only if it is based upon evidence upon which a reasonable jury could return a verdict in favor of the non-moving party. *Hedrick v. Western Reserve Care System*, 355 F.3d 444,451 (6th Cir. 2004). For a fact to be material, it must affect the outcome of the suit. *Smith v. Chrysler Corp.*,155 F.3d 799,804 (6th Cir. 1998) (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986)). Finally, factual disputes that are irrelevant or unnecessary will not be considered. *Id.*

The moving party has the initial burden of showing the absence of a genuine issue of material fact as to an essential element of the non-moving party's case. *Hedrick*, 355 F.3d at 451. Once the moving party satisfies its burden, the burden shifts to the non -moving party to set forth specific facts showing a triable issue. *Id.* at 452. The proper inquiry on an appeal from a grant of summary judgment is whether the evidence presents a sufficient disagreement to require submission to a jury. *Williams v. Ford Motor Co.*,187 F.3d 533, (6th Cir. 1999)(citing Anderson, 477 U.S. at 251-52 (1986)).

IV. DISCUSSION

The Appellants identify eight (8) "Issues Presented for Review" in their Appellants' Brief. However, the Brief discusses seven (7) different, but related issues. The seven (7) issues that are fully discussed in the Appellants' Brief will be addressed herein instead of the eight (8) "Issues Presented for Review."

1. The Trial Court ignored evidence of individual and municipal liability under 42 U.S.C. § 1983

Appellants allege that the individual and municipal Appellees, with the exception of Inkster, violated their federal rights. The Appellants again point to evidence that they originally identified, that they say creates genuine issues of material fact as to the individual liability of Kelley, Abdilla, Ondejko, Martin, Brown and Abdullah and the municipal liability ofVBT and Romulus.

Section 1983 prohibits officials acting under color of law from depriving citizens of "any rights, privileges, or immunities secured by the Constitution." *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020, 3076 (2010). Rather than identify the specific rights, privileges or immunities that were allegedly violated, other than the right of association, the Appellants argue that the trial Court gave no consideration to all possible avenues for § 1983 liability and decided only whether the Appellees abridged Appellants' right of association. Thus, the Appellants have failed to preserve any violation of

specific constitutional rights.[2] As a result, we will only consider the issue of whether Appellants violated the Appellee's right of association.

Regarding the right of association, Appellee's CFAC alleges that the Appellants have sought to: deprive Hamilton, J.R. Hamilton, Jeremy Hamilton and Michael Hamilton of their rights of ownership of business; to interfere with the family relationship and the right of association; and to inhibit their right of free speech in violation of § 1983. (CFAC ¶¶ 227, 267 and 302.) The CFAC also alleges that Hamilton and his corporations have been denied equal protection. (CFAC ¶¶ 229, 269, 304.) Finally, the CF AC alleges that the Appellants retaliated against them for their exercise of their First Amendment rights. (CFAC ¶¶ 228, 268 and 303.)

According to the Appellants, as a result of the harassment of the police, the MLCC barred John Hamilton from working with his children. Appellants argue that this restriction is "unconstitutional on its face." The Appellants also argue that the trial court's holding that these claims were barred because the only proper party Defendant was the MLCC, which is not a party, "is error." However, the Appellants offer no facts or legal argument as to how Hamilton was illegally barred from working with his children.

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[2]Federal Rule of Appellate Procedure 28(a) requires that an appellant's brief include a statement of the issues presented for review and argument on each issue presented. FRAP 28(a).

The trial court dismissed the First Amendment claims because the individual plaintiffs did not assert that their right to associate was violated by any current defendant. Further, the Appellants offer no facts or legal argument as to why the trial court's holding regarding MLCC is in error. Without more, there is nothing for this Court to review. There are no genuine issues of material fact and the Appellees are entitled to judgment as a matter of law on Appellants' right-of-association claim. The trial court's decision on the right-of-association matter is affirmed.

The only other possible avenue for § 1983 liability mentioned in the Appellants' Brief is "retaliation taken against the Appellants for engaging in 1st amendment expression." However, the Appellants offer no argument regarding this alleged § 1983 liability. Thus, alleged § 1983 liability for retaliation for engaging in First Amendment expression was not appealed. If it were, it would be without merit.

Retaliation for exercise of First Amendment rights is a violation of § 1983. *See Hartman v. Moore*, 547 U.S. 250, 256 (2006). The arguable "facts" identified by the Appellants for their conspiracy claim are more fully set forth below and are the same and only facts that could be identified as the basis for a § 1983 retaliation claim. As with the conspiracy claim, this plethora of arguable facts suffer from a multitude of problems, including that they misstate the underlying evidence, are presented only to prejudice this Court, are irrelevant, do not describe illegal activity, do not constitute evidence, are actions

not taken under the "color" of the law or are legal conclusions unsupported by factual allegations. Thus, based upon these alleged facts, no reasonable juror could find that the Appellees retaliated against the Appellants based upon the Appellants' exercise of First Amendment rights.

There are no genuine issues of material fact and the Appellees are entitled to judgment as a matter of law on Appellant's right-of-association claim. Further, if the Appellants had appealed a retaliation claim, there would be no genuine issues of material fact and the Appellees would be entitled to judgment as a matter of law on that claim.

Therefore, Appellants' first assignment of error is not well taken. The trial court did not ignore evidence of individual and municipal liability under 42 U.S.C. § 1983.

2. There is evidence from which a reasonable juror could have found both a § 1983 conspiracy and state-law conspiracy by the Appellees.

3. The Trial Court erred when it redefined and narrowed the nature of the conspiracy alleged by the Appellants.

4. The Trial Court erred when it refused to consider the evidence of the acts of non-Defendant co-conspirators.

5. The Trial Court erred when it misapplied the law relative to conspiracy.

Each of the above four assignments of error go to summary judgment on the conspiracy claim. The trial court granted summary judgment to the VBT, Romulus and Inkster Defendants on the conspiracy

claim. Therefore the above four assignments of error will be considered together.

Appellants' CFAC merely alleges counts brought under the "conspiracy and continuing wrongful acts doctrine." The CFAC does not identify the specific legal basis for the conspiracy claim.

Further, the Appellants now argue that the "corporate Appellants" allege that VBT, Romulus, and Inkster engaged in a variety of acts designed to put Hamilton's bars out of business. Thus, the Plaintiffs/Appellants do not now appeal the grant of summary judgment regarding the individual plaintiffs' conspiracy claims.

A civil conspiracy actionable under § 1983 is

> [a]n agreement between two or more persons to injure another by unlawful action. Express agreement among all the conspirators is not necessary to find the existence of a civil conspiracy. Each conspirator need not have known all of the details of the illegal plan or all of the participants involved. All that must be shown is that there was a single plan, that the alleged coconspirator shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy that caused injury to the complainant.

Hooks v. Hooks, 771 F.2d 935,943-44 (6th Cir. 1985). Further, conspiracy claims must be pled with some degree of specificity, and vague and conclusory allegations unsupported by material facts are not sufficient to state a claim. *Spadafore v. Gardner*, 330 F.3d 849, 854 (6th Cir. 2003) (citing *Gutierrez v. Lynch*, 826 F.2d 1534, 1538 (6th Cir. 1987)). Finally, circumstantial evidence of an agreement among all conspirators may provide adequate proof of a conspiracy. *Id.* (citing *Weberg v. Franks*, 229 F.3d 514,528 (6th Cir. 2000)).

As to damages, a conspirator is liable for all of the acts taken in furtherance of the conspiracy, regardless of whether the conspirator participated directly in the act. *Canter v. Hardy*, 188 F. Supp.2d 773, 792 (E.D. Mich. 2002). Also, a settlement with a named co-conspirator is not a bar to introducing evidence of the settling defendant's conspiratorial acts. *Id.* at 776.

Michigan conspiracy law is similar to federal conspiracy law. Michigan conspiracy law provides that "[a] conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a purpose not unlawful by criminal or unlawful means." *Fenestra Inc. v. Gulf America Land Corp.*, 141 N.W.2d 36, 48 (Mich. 1966). Thus, if applicable, the unlawful means must have been used to accomplish a criminal or unlawful purpose.

The Appellants first argue that the Appellees conspired to put Hamilton's bars out of business. They identify the following plethora of purported

factual allegations in support of their conspiracy claim:

> 1. Southgate police officer Lawrence Lokuta ("Lokuta") (a non party) conducted three actions against Henry's South and used these to file MLCC violations in an effort to close Henry's South.
>
> 2. Within three months of these charges being settled, Lokuta again conducted undercover operations against Henry's South and waited six months before filing MLCC violations allegedly to ensure that the dancers would not be available to testify and contradict his allegations. As a result of these violations, Henry's South's liquor license was revoked.
>
> 3. The MLCC then settled with Henry's South allowing the business to be sold and transferred but Southgate would not approve the transfer of an entertainment permit to allow topless dancing.
>
> 4. Between 1991 and 2001, Southgate police traveled through Henry's South's parking lot several times a day and evening and would park across the street in plain view of the customers.

These police officers allegedly "unjustifiably" interrogated the bar's employees and stopped and followed patrons leaving the bar, allegedly without justification.

5. During some of this time, Laurence Hall was the Southgate Police Chief and was married to Susan Hall when she was the Mayor of Southgate between 1999 and 2003. In 2003, Susan Hall was videotaped at a Southgate City Council meeting stating, "we've been working for eight years to get Hamilton out of here."

6. On May 10, 2000, Southgate passed an "anti-nudity"ordinance allegedly directed at Henry's South.

7. After Henry's South lost its liquor license, the Southgate police administration on October 2,2002, directed that the anti-nudity ordinance be enforced only against non liquor-licensed establishments, specifically stating that enforcement of the ordinance with regard to topless dancing is only appropriate against Henry's South.

8. On May 7, 2002, four days after VBT had raided Legg's, VBT officer Abdilla

contacted Detective Walsh of the Southgate police to discuss his investigation of Henry's South.

9. Henry's South sued Southgate, and, in 2006, the anti-nudity ordinance was found unconstitutional.

10. Prior to 1991, at an MLCC hearing regarding Henry's in Inkster, an MLCC attorney instructed one of Hamilton's witnesses to evade a subpoena.

11. Subsequently, the MLCC filed charges against Henry's South. Woody Webb, an MLCC enforcement officer, told Hamilton that he had been instructed to show Hamilton "who's the boss" and not to settle the charges against Henry's South even though it was a first offense.

12. Assistant Attorney General Thomas Giachino, assigned to the MLCC, testified that he could not recall other establishments who had engaged in lap dancing having their liquor license revoked and could not recall any other license revocation in 1994 and that such revocations are rare.

13. On April 2, 1996, Wayne County Assistant Prosecutor Larry Roberts sent

a memo to Inkster police asking for information on Hamilton's two topless bars in Inkster and said that the MLCC would cooperate in prosecuting these establishments.

14. On September 7, 2007, a federal court found that the MLCC rules that were used as the basis of the revocation of Henry's South's license could not be enforced until the underlying legal proceeding was resolved.

15. Soon thereafter, a Wayne County Task Force conducted an undercover operation at Bogart's. The same Task Force, this time with Inkster police officer Martin and VBT police officer Gregory Laurain, then conducted an undercover operation against Henry's South.

16. On May 3,2002, VBT executed two search warrants outside its jurisdiction in a residence in Wayne, Michigan, resulting in the seizure of a safe containing in excess of 1.6 million dollars of Hamilton's money.

17. On May 7, 2002, Abdilla contacted Southgate Police to discuss his investigation of Henry's South.

18. On May 17, 2002, VBT and Romulus police officers executed a search warrant at Henry's.

19. On May 21, 2002, Ondejko used a confidential informant to conduct an undercover operation at Bogart's.

20. On May 26, 2002, a Romulus police officer conducted an undercover operation against Bogart's.

21. On June 21,2002, Romulus police officers, working with VBT, again conducted an undercover operation at Bogart's.

22. The Appellants assert that the trial court "summarily dismissed Levine's 429 page report detailing the conspiracy as 'highly subjective and argumentative.'" Levine, Appellants' expert, is alleged to have reviewed over 20,000 pages of Appellants' exhibits and depositions and many hours of videotaped interviews.

23. VBT clearly did not want a topless bar in its community and drafted SOB ordinances that were directed at and only enforced against Legg's.

24. When a lawsuit failed to close Legg's, VBT tried to close Legg's through an extensive and unwarranted criminal investigation.

25. Kelley was present at the May 3,2002, search for no legitimate reason.

26. The report of the criminal investigation submitted by VBT and Romulus investigators was false and based upon perjured testimony and substandard investigative procedures.

27. VBT and Romulus had contacts with Southgate and Inkster and conducted numerous investigations and searches outside of their jurisdiction.

28. According to another Plaintiffs' / Appellants' expert, the passing of the VBT SOB ordinances and the intensive criminal investigation caused a dramatic loss of sales at Legg' s. Additionally, Henry's South had more than 3.2 million dollars in losses.

29. Hamilton testified that he experienced the distress of a sham criminal prosecution, the seizure and holding of $1.6 million, police harassment and perjury, the blocking of

the sale of Henry's South, and "millions of dollars in lost sales."

30. The trial court has previously engaged in this type of reversible error.

31. There was inadequate supervision of Abdilla and Ondejko, the two lead investigators leading, to giving informants money to have sex with dancers and for Abdilla and Ondejko themselves to go into the businesses and engage in sexual activity.

32. VBT officers had been at Legg's more than 119 times while they were off duty drinking for free and engaging in illegal sexual activity.

33. It can be inferred that the bomb threat on May 11, 2000, was perpetrated by Brown, Martin and Abdullah in order to seize a video tape of the dancers.

34. The Joint Investigation Agreement [equitable sharing arrangement agreement] was entered into with an unlawful purpose.

Analysis

There are many problems with the above plethora of factual allegations identified by the Appellants, not the least of which is that there is no evidence of an agreement between anyone to engage in an unlawful action or to engage in a lawful action for an unlawful purpose. What Appellants lack in quality, they attempt to make up in quantity. Yet, at best, the Appellants have shown that various government entitles worked together to investigate criminal activity, a perfectly legal and accepted practice. At worst, the Appellants have shown that some of the individuals and police procedures involved may not have been perfect, but not illegal.

Many of the Appellants' allegations misstate the underlying evidence are presented only to prejudice this Court; are irrelevant, do not describe illegal activity, do not evidence an illegal purpose, were not actions taken under the "color" of the law, are legal conclusions unsupported by factual allegations or are a combination of the foregoing.

By way of further example, much is made of the equitable sharing agreement and Appellants' Expert's view of the equitable sharing agreement. Yet, expert testimony is not needed to decide the legality of the equitable sharing agreement. The equitable sharing agreement is an often-used type of agreement, is not illegal, and makes no mention of putting Hamilton out of business. Further, the fact that an equitable sharing agreement may result in criminal charges does not render the agreement unlawful.

Appellants' expert report is, at best, speculative and conclusory. The expert report cannot be used to create an issue of fact where none existed. *See Williams*, 187 F.3d at 544.

Appellants argue that the trial court erred when it narrowed the object of the conspiracy claim in the case of the VBT and Romulus Defendants to consideration of only the equitable sharing agreement. The Appellants also argue that the trial court erred in its definition of wrongful acts by framing the issue as what damages flowed from the seizure of property in the case of the VBT and Romulus Defendants and what damages flowed from the bomb scare incident in the case of the Inkster Defendants. Finally, the Appellants argue that the trial court erred when it refused to consider the acts of the MLCC and Southgate. All of these arguments fail because the Appellants have not shown any agreement to engage in unlawful conduct.

The Appellants also argue that the court should have considered whether the co-conspirators used arguably lawful means for the improper purpose of putting Appellants' bars out of business. In this case, while it may be against the law to put Appellants' bars out of business using illegal means, it is not against the law if Appellants' bars are forced out of business for failing to comply with the law, and Appellants have not shown that the co-conspirators failed to comply with the law.

The above facts and the additional facts identified upon de novo review, even if accepted as true, do not identify any illegal activity or any legal activity taken with an illegal purpose, a requirement

to sustain a conspiracy claim under either federal or Michigan conspiracy law. This conclusion is supported by the individual Appellants who all testified that they did not have any personal knowledge that any of the Defendants were trying to put them out of business.

The factual allegations identified by the Appellants do not identify a sufficient disagreement on the elements of a conspiracy claim to require submission to a jury. There are no genuine issues of material fact and the VBT, Romulus and Inkster Defendants are entitled to summary judgment on the corporate Appellants' conspiracy claim. The trial court's decision on the conspiracy claim is therefore affirmed.

6. The Trial Court erred when it redefined and narrowed the claim relative to tortious interference with business relations.

The Appellants argue that the trial court erred when it narrowed the tortious-interference claim to consideration of only the raid of Legg' s and failed to consider the other factual allegations regarding their § 1983 claims for attempting to put Hamilton's bars out of business. However, this Court has considered Plaintiffs'/Appellants' § 1983 conspiracy, right-of-association and retaliation claims above and found that the Appellees are entitled to summary judgment on each.

Under Michigan law, the Plaintiffs/Appellants must show the following elements to prevail on a tortious-interference-with-a-business-relationship claim:

> (1) the existence of a valid business relation or expectancy; (2) knowledge of the relationship or expectancy on the part of the defendant interferer; (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resulting damages to the party whose relationship or expectancy has been disputed.

Wausau Underwriters Insurance Co. v. Vulcan Development, Inc., 323 F.3d 396, 404 (6th Cir. 2003). Further, showing an intentional interference requires showing purposeful or knowing behavior and that the interference was either (1) a per se wrongful act or (2) a lawful act done "with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another." *Id.* (quoting *Feldman v. Green,* 360 N.W.2d 881, 891 (Mich. Ct. App. 1984)). Finally, to show that a lawful act was done with malice and without justification, the plaintiff must show, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference. *Erickson's Flooring & Supply Co., Inc., v. Tembec, Inc.*, 212 F. App'x 558, 566 (6th Cir. 2007)(unpublished).

The Appellants argue that the acts of the Appellees constituting § 1983 violations likewise state a claim for tortious interference. However, summary judgment has been granted to these Appellees on the alleged § 1983 violations. Thus, the Plaintiffs/Appellants have not shown the VBT,

Romulus or Inkster Defendants either committed a per se wrongful act or a lawful act done with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another.

There are no genuine issues of material fact and the VBT, Romulus and Inkster Defendants are entitled to judgment as a matter of law on Appellants' tortious-interference-with-business-relationship claim. The trial court's decision on this claim is therefore affirmed.

7. The Trial Court erred in disregarding evidence on the basis that Appellants at deposition could not remember all the facts supporting their claims.

The Appellants' final argument is that the trial court did not consider evidence for purposes of the motions for summary judgment beyond Hamilton's lack of knowledge of the facts supporting his claims. Rule 56(c) requires the court to consider the pleadings, the discovery and disclosure materials, and any affidavits on file. Fed. R. Civ. P. 56(c). Thus, when considering a motion for summary judgment, a court should consider more than only one deposition if more Rule 56 evidence than one deposition is filed, as is the case here.

In this case, there is evidence, based upon a reading of the opinions, that the trial court examined the three motions for summary judgment, the responses and the replies, including the pleadings, discovery, and disclosure materials and affidavits on file. In reaching its summary judgment decisions, the trial court cites ample evidence in addition to the individual Appellants deposition testimony.

Therefore, the trial court did not err in disregarding evidence that the individual Appellants could not remember all the facts supporting their claims at deposition.

IV. CONCLUSION

The trial court did not ignore evidence of individual and municipal liability under 42 U.S.C. § 1983. The Appellees are thus entitled to summary judgment on these claims.

The trial court did not misapply conspiracy law and there is no evidence from which a reasonable juror could have found a § 1983 conspiracy or a state-law conspiracy by the Appellees. Thus, the Appellees are entitled to summary judgment on Appellant's conspiracy claims.

Appellants' tortious interference with business relations claim fails. Appellees are thus entitled to summary judgment on this claim as well.

Finally, the Appellants' statements and the evidence that is identified in addition to the Appellants' statements were considered by the trial court and do not support the Appellants' claims. The judgment of the district court is therefore AFFIRMED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JO-BET, INC., GARTER BELT, INC., HAMILTON'S HENRY THE VIII LOUNGE, HAMILTON'S BOGART, INC., JOHN HAMILTON, JOHN HAMILTON, JR., JEREMY HAMILTON, MICHAEL HAMILTON, JOHN L. HAMILTON RETAINED ANNUITY TRUST,

Plaintiffs,

Case No. 01-CV-74698

HONORABLE AVERN COHN

v.

CITY OF INKSTER, PAUL MARTIN, KENNETH BROWN, and ANTONY ABDULLAH,

Defendants.

_____/

ORDER AMENDING AUGUST 26, 2009, MEMORANDUM AND ORDER

On August 26, 2009, the Court issued a memorandum and order in which it, among other things, dismissed the City of Inkster as a defendant and granted summary judgment in favor of Martin, Brown, and Abdullah. On page 3 of the memorandum and order, the paragraph beginning "Now before the

Court," the Court erroneously stated that it will be grating summary judgment in favor of Martin and Brown "in part." This paragraph is AMENDED to read as follows:

"Now before the Court is the Inkster Defendants' Motion for Summary Judgment. For the reasons that follow, the motion will be granted."

SO ORDERED.

Dated: August 27, 2009

s/ Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, August 27, 2009, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. HAMILTON, et al.,
Plaintiffs,

Case No. 01-CV-74698

HONORABLE AVERN COHN

v.

CITY OF INKSTER, PAUL MARTIN,
KENNETH BROWN, and
ANTONY ABDULLAH,
Defendants.

_____/

JUDGMENT

For the reasons stated in the Memorandum and Order entered and filed on this date, judgment is entered in favor of the remaining defendants and the case is DISMISSED.

DAVID WEAVER

Dated: August 26, 2009

By s/ Julie Owens
Deputy Clerk

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, August 26, 2009, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JO-BET, INC., GARTER BELT, INC., HAMILTON'S HENRY THE VIII LOUNGE, HAMILTON'S BOGART, INC., JOHN HAMILTON, JOHN HAMILTON, JR., JEREMY HAMILTON, MICHAEL HAMILTON, JOHN L. HAMILTON RETAINED ANNUITY TRUST,

Plaintiffs,

Case No. 01-CV-74698

HONORABLE AVERN COHN

v.

CITY OF INKSTER, PAUL MARTIN, KENNETH BROWN, and ANTONY ABDULLAH,

Defendants.

_____/

MEMORANDUM AND ORDER (1) DISMISSING THE CITY OF INKSTER AS A DEFENDANT. (2) DISMISSING ALL FIRST AMENDMENT CLAIMS. (3) DISMISSING JOHN HAMILTON. THE JOHN L. HAMILTON RETAINED ANNUITY TRUST. JOHN HAMILTON. JR.. JEREMY HAMILTON. AND MICHAEL HAMILTON AS PLAINTIFFS. (4) DISMISSING PLAINTIFFS' TAKINGS CLAIM. (5) DISMISSING PLAINTIFFS' CONVERSION

CLAIM. (6) DISMISSING PLAINTIFFS' LARCENY CLAIM. and (7) GRANTING SUMMARY JUDGMENT IN FAVOR OF ANTONY ABDULLAH. PAUL MARTIN and KENNETH BROWN

I. Introduction[1]

This is civil rights case under 42 U.S.C. §§ 1983 and 1985(2) with pendent state law claims. Broadly stated, Plaintiffs claim that defendants conspired to deprive them of their right to operate sexually oriented businesses ("SOBs"); namely, four

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[1]The Court originally scheduled this matter for hearing. Upon review of the parties' papers, however, the Court finds that oral argument is not necessary. See ED. Mich. LR 7.1(e)(2).

strip clubs.[2] Plaintiffs seek injunctive relief and damages.

Plaintiffs are as follows:

(1) Jo-Bet, Inc., d/b/a Henry the VII South - An adult entertainment establishment located in the City of Southgate.

(2) The Garter Belt, Inc., d/b/a Legg's Lounge ("Leggs") - An adult entertainment establishment located in Van Buren Township ("VBT").

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[2] SOB is defined as

> an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center, or similar establishment, or any place that permits patrons to be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for electronic transmission over the World Wide Web.

See VBT Ex. 2 p. 7.

Strip club is defined by Wikipedia as "a nightclub or bar that offers striptease (the erotic removal of a performer's clothing) and possibly other related services such as lap dances."

(3) Hamilton's Henry VIII Lounge, Inc. - An adult entertainment establishment located in the City of Inkster.

(4) Hamilton's Bogart, Inc., d/b/a Bogart's Joint - An adult entertainment establishment located in the City of Inkster.

(5) John Hamilton - Sole stockholder of the above-listed corporations.

(6) John Hamilton Trustee of the John L. Hamilton Retained Annuity Trust.

(7) John Hamilton, Jr. - John Hamilton's son.

(8) Jeremy Hamilton - John Hamilton's son.

(9) Michael Hamilton - John Hamilton's son.

The defendants who remain party to this case are: (1) the City of Inkster, (2) Detective Paul Martin (Martin), (3) Detective Kenneth Brown (Brown), and (4) Officer Antony Abdullah (Abdullah). However, in their response brief, Plaintiffs admit that they have no viable claim against the City of Inkster: "After extensive discovery[,] the Plaintiffs acknowledge that the City [of Inkster] defendant does not have a municipal policy or custom that has violated their constitutional rights." In light of this concession, all claims against the City of Inkster will be dismissed. From this point forward, the term "City of Inkster Defendants," as used herein, is a reference to Brown,

Martin, and Abdullah only. These three individuals are Inkster police officers who are being sued in their individual capacities.

The complaint currently governing this action is the Corrected Fourth Amended Complaint ("FAC"). See Dkt. 131. On August 17,2009, the Court issued an order in which it, among other things, granted summary judgment in favor of the Van Buren Township Defendants and the City of Romulus Defendants. See Dkt. 333. For the purposes of this memorandum and order, the Court will assume the parties' familiarity with its previous orders.

Now before the Court is the Inkster Defendants' Motion for Summary Judgment. For the reasons that follow, the motion will be granted in full as to Abdullah and granted in part as to Martin and Brown.

II. Background

A.

This case involves four strip clubs: (1) Henry the VIII South, owned by J-Bet, Inc., (2) Leggs Lounge ("Leggs"), owned by the Garter Belt, Inc., (3) Henry the VIII Lounge, owned by Hamilton's Henry the VIII Lounge, Inc. ("Henry's"), and (4) Bogart's Joint ("Bogart's"), owned by Hamilton's Bogart, Inc. John Hamilton (Hamilton) is the sole stockholder of the four corporations. Generally, Plaintiffs' claims against the Inkster Defendants stem from allegations that the Inkster Defendants conspired among themselves, and with the Michigan Liquor Control

Commission (MLCC), to put Hamilton's two Inkster strip clubs-Henry's and Bogart's-out of business. However, at his deposition, Hamilton testified that there is no conspiracy involving the Inkster Defendants as to Bogart's:

> Q: Okay. And as far as Inkster and Bogart's, you don't have anything pending there, so there's no conspiracy as far as Bogart's concerned?
>
> A: No.
>
> Q: Correct?
>
> A: Correct.
>
> * * * *
>
> Q: Do you have any proof that anybody from Inkster at anytime through any means whatsoever tried to close Bogart's?
>
> * * * *
>
> A: Nobody involved in the City of Inkster, no.

Hamilton Dep. (Dec. 11, 2006) at pp. 399, 496. This testimony forecloses any conspiracy claim involving the Inkster Defendants to harm Bogart's.

B.

The main thrust of Plaintiffs' claims against the Inkster Defendants with regard to Henry's is that "Martin with Brown and Abdullah, set about to close Henry's" when they allegedly planned and executed a bomb scare at Henry's on May 11,2000. FAC at ¶ 124. The purported facts underlying the bomb scare incident are set forth in Plaintiffs' FAC as follows:

> 126. On May 11,2000, at approximately 3:00 p.m., Abdullah came into Henry's, out of uniform, and took a seat at a side stage. Abdullah drank "pop" and occasionally would leave his seat and walk toward the men's room.
>
> 127. At approximately 4:30- 5:00 p.m., Elvie Gensoli, acting Manager and an employee of Henry's, received a call from an unidentified male stating that there was a bomb threat against Henry's and that the bomb was to explode at approximately 9:00 p.m. that night. Gensoli was instructed to close the doors to Henry's business and advised that new customers were not to enter.
>
> 128. Ms. Gensoli inquired if this call was a "joke" and the caller said "no" but did not identify himself. When the caller hung up, Ms. Gensoli dialed

"*69", redialed the number and when answered, was advised that this was a phone at the Inkster police.

129. Approximately 20 minutes later, the Inkster Police Department arrived with a "bomb" dog. Brown advised Ms. Gensoli to tell customers that there was "carbon monoxide leaking" and that patrons and dancers were to exit the bar. In addition, Brown ordered Ms. Gensoli from the premises.

130. Approximately 15 minutes after ordered out of the bar, Brown asked Ms. Gensoli to re-enter the bar and advised her that the explosives dog utilized by the City of Inkster "had found something" behind the bar and near the employees' bags. Officer Brown asked Ms. Gensoli to look around the bar to see if anything was out of place. This action was totally against acceptable police standards when faced with a bomb threat.

131. Brown advised Gensoli again to exit the bar and that the unit would be bringing another dog to the scene to verify the presence or absence of a bomb.

132. After a second delay of approximately 15 minutes, Brown again asked Ms. Gensoli to enter and this time asked for her keys to downstairs offices which were locked and had, at all times relevant, been locked. Brown stated that it was necessary to check the downstairs office to insure that no bomb was present. Brown was advised that the downstairs area was and had been locked and not accessible to customers, but he insisted on the keys.

133. At the insistence of Brown, Ms. Gensoli gave Brown keys to the office and the downstairs area. Brown then went downstairs.

134. Approximately 10 minutes later, Brown exited the downstairs area, returned Ms. Gensoli's keys and had a video tape in his hand. Ms. Gensoli demanded that the tape be returned to her and that he did not have permission to take the tape. At this time Gensoli called E. Carol Paquette, manager of Henry's on her cell phone and Paquette told Brown not to take the tape. Neither Gensoli nor Paquette has any idea what else Brown may have taken.

135. Despite demands by the agents and employees of Henry's, Brown took

the tape and placed it in his police vehicle, refusing to return same.

136. Shortly after Brown placed the tape in his police vehicle, a second dog arrived and, at a very few minutes, Brown advised Gensoli that the second dog didn't find anything.

137. At this point in time, the dancers and patrons were allowed to return to the bar although most of the dancers and patrons had now left the scene. At this time, Brown told Gensoli to close the bar, although no indication of a bomb had been found and the "bomb squad" never arrived.

138. One of the waitresses re-entered the bar with Paquette and others. This waitress had noticed Abdullah, as set forth earlier in this Complaint, when he had first entered at approximately 3:00 but did not know that he was a police officer. When she returned inside of Henry's, she noted that Abdullah was sitting at the bar with Brown. At this point in time, the waitress heard Brown say to Abdullah: "So you decided to do it today and I was going to do it tomorrow."

139. When Abdullah and Brown saw the waitress, they discontinued their conversation. Subsequently, on August3, 2000, Abdullah again came to the bar and the waitress learned Abdullah's identity. The waitresses remember Abdullah in part because he did not tip.

140. The City of Inkster Police Department records incoming calls such as bomb threats and Plaintiffs are informed and believe that the call was made as a subterfuge and further believe that it was made by Abdullah.

141. As police officers, Brown, Abdullah and Martin are also enforcement agents for the MLCC.

142. At no time on May 11, 2000, did Brown, Abdullah or any other member of the Inkster Police Department have a warrant to search Plaintiffs' property or seize any property therefrom and the taking of property from Plaintiffs' premises was over objection of Henry's agent and employee.

143. After taking the tape from Henry's, Brown reviewed the tape, found nothing regarding the bomb threat and placed it in his desk drawer for return to Henry's.

However, Martin, in furtherance of the conspiracy to put Hamilton out of business, entered Brown's desk drawer, took the tape and then filed a formal complaint with the MLCC claiming that the tape recording showed violations of Rule 436.1411 (1).

144. Neither Henry's agents or employees nor Hamilton saw the tape before it was seized.

145. Hamilton contacted the Inkster Police Department, advised that the tape had been unlawfully taken and further advised the MLCC that the tape had been taken.

146. Assistant Attorney General Courtney Smith was advised that the tape had been taken illegally, that the tape would reveal that the statements of the officers were false and perjurious and was advised that it made no difference whether the officers were committing perjury or whether the tape had been illegally seized.

* * * *

151. Hamilton was advised that the rules of evidence did not apply in Administrative hearings in the State of

> Michigan and whether the tape was illegally seized or not, the Commission could make a determination of culpability.
>
> 152. In furtherance of the conspiracy to put Hamilton out of business, Brown, Abdullah and Martin testified falsely, in direct contradiction of the physical evidence: to wit, the tape recording showing their entry and actions at Henry's on May 11, 2000.
>
> * * * *
>
> 154. Martin subsequently recanted portions of his testimony, claiming mistake.

FAC at ¶¶ 126-146,151-152,154.

The person or persons responsible for executing the bomb scare have never been identified. Moreover, the videotape, which was initially taken by Brown and subsequently sent to the MLCC by Martin, was used as evidence in connection with liquor license violation proceedings against Henry's before the MLCC. The Michigan Court of Appeals has adjudicated the issue of whether the videotape was admissible in those proceedings, answering the question in the affirmative. See Hamilton's Henry the VIII Lounge, Inc. v. Dep't of Consumer & Industry Servs., et al., No. 255893, 2006 WL 2035617 (Mich.

Ct. App. July 20, 2006) (per curiam). The Michigan Supreme Court denied leave to appeal, thus ending the litigation. See Hamilton's Henry the VIII Lounge, Inc. v. Dep't of Consumer & Industry Servs., et al., 728 N.W.2d 438 (Mich. 2007).

III. Dismissal of Individual Plaintiffs and First Amendment Claims

Before addressing the Inkster Defendants' Motion for Summary Judgment, the Court first addresses the right of the individual plaintiffs to sue. As stated above, plaintiffs are four corporations, four individuals, and one trust. As stated by the Fifth Circuit and quoted with approval by the Sixth Circuit in Canderm Pharmacal, Ltd. v. Elder Pharms., Inc., 862 F.2d 597, 602-603 (6th Cir. 1988),

> [t]he general rule is, of course, well established that an action to redress injuries to a corporation, whether arising out of contract or tort, cannot be maintained by a stockholder in his own name but must be brought in the name of the corporation, since the cause of action being in the corporation, the stockholder's rights are merely derivative and can be asserted only through the corporation. The general rule is applicable in cases where the individual is the sole stockholder.

Schaffer v. Universal Rundle Corp., 397 F.2d 893, 896 (5th Cir. 1968) (footnote omitted).

Moreover,

> it is universal that where the business or property allegedly interfered with by forbidden practices is that being done and carried on by a corporation, it is that corporation alone, and not its stockholders (few or many), officers, directors, creditors or licensors, who has a right of recovery, even though in an economic sense real harm may well be sustained as the impact of such wrongful acts bring about reduced earnings, lower salaries, bonuses, injury to general business reputation, or diminution in the value of ownership.

Martens v. Barrett, 245 F.2d 844, 846 (5th Cir. 1957) (footnotes omitted) (quoted with approval by the Sixth Circuit in Canderm Pharmacal. Ltd., 862 F.2d at 603).

This case involves several claims; however, plaintiffs do not clarify which claims are brought by which plaintiffs. Applying the law discussed in the preceding paragraph, it is clear that the individual plaintiffs and the trust lack standing to assert a conspiracy claim, or any other claim to redress injuries to the corporate entities, because their rights are, at best, derivative of those of the corporate entities.

However, the individual plaintiffs may properly bring a claim that defendants violated their freedom to associate under the First Amendment

because that is a claim belonging to them and not the corporate entities. However, the Court will summarily dismiss the First Amendment claim because the individual plaintiffs claim that their right to associate was violated-not by any of the defendants who remain party to this action- but rather by the MLCC, a former defendant with which plaintiffs have settled. See Dkt. 330.[3] As the

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[3] The Court notes that the individual plaintiffs baldy assert in the FAC that their right to associate was violated by the Inkster Defendants. However, in their brief, they state that their "freedom to associate claim comes from the MLCC's acts to only grant liquor licenses to John Hamilton's sons if they agreed to a stipulation that neither John Hamilton or their mother could be present at or assist in the management of the son's businesses." Pls.' Br. at 5. The individual plaintiffs have not sufficiently alleged or proven that the Inkster Defendants had anything to do with the stipulation referenced in the preceding sentence, much less that there was an agreement among the Inkster Defendants, on the one hand, and the MLCC, on the other hand, to deprive the individual plaintiffs of their rights. Hamilton even admitted during his deposition that he has no evidence that anyone associated with Inkster interfered with his family relationship or right of association. See Hamilton Dep. (Dec. 11,2006) at pp. 497-498. To the extent the individual plaintiffs argue that the Inkster Defendants are liable under the First Amendment because they are the MLCC's co-conspirators, this argument fails because the individual plaintiffs have offered only conclusory allegations and no evidence in support of such an extraordinary claim.

individual plaintiffs and the trust assert claims against a former defendant who is no longer party to this action, they are no longer appropriate plaintiffs herein. Therefore, John Hamilton, the John L. Hamilton Retained Annuity Trust, John Hamilton, Jr., Jeremy Hamilton, and Michael Hamilton will be dismissed as plaintiffs for lack of standing. From this point forward, "Plaintiffs," as used herein, refers only to the corporate plaintiffs.

IV. Analysis

Plaintiffs assert six claims against the Inkster Defendants: (1) conspiracy, (2) First Amendment violations, 42 U.S.C. § 1983, (3) 42 U.S.C. § 1985(2), (4) conversion,[4] (5) taking, and (6) larceny. The Court has already adjudicated the First Amendment claim. See supra at p. 9 n.3. The Court shall address the remaining claims, in turn, below.

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[4] Plaintiffs do not specify whether they intend to bring a common law conversion claim or a statutory conversion claim or both. In their brief, they discuss law relating to both causes of action, intermingling the two. Moreover, Plaintiffs discuss their "takings" claim and their conversion claim as if they are one claim.

A. Conspiracy

1. Law

As stated by the Sixth Circuit, the standard for proving a conspiracy under § 1983 is as follows:

> A civil conspiracy is an agreement between two or more persons to injure another by unlawful action. Express agreement among all the conspirators is not necessary to find the existence of a civil conspiracy. Each conspirator need not have known all of the details of the illegal plan or all of the participants involved. All that must be shown is that there was a single plan, that the alleged coconspirator shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy that caused injury to the complainant.

Hooks v. Hooks, 771 F.2d 935, 943-944 (6th Cir. 1985).

The standard is similar under Michigan law: "A conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a purpose not unlawful by criminal or unlawful means." Fenestra Inc. v. Gulf Am. Land Corp., 141 N.W.2d 36, 48 (Mich. 1966). Additionally,

> at the core of an actionable civil conspiracy is a question of damages. This facet of the law of conspiracy is accurately summed up in the case of Roche v. Blair: "The law is well established that in a civil action for damages resulting from wrongful acts alleged to have been committed in pursuance of a conspiracy, the gist or gravamen of the action is not the conspiracy but is the wrongful acts causing the damages. The conspiracy standing alone without the commission of acts causing damage would not be actionable. The cause of action does not result from the conspiracy but from the acts done." In the case of Auto Workers' Temple Ass'n v. Janson, the point is made more succinctly: the foundation of the action is the damage and not the conspiracy.

Id. at 48-49 (citations omitted). See also 16 Am. Jur. 2d Conspiracy § 53 ([t]he gist of a civil conspiracy is not the unlawful agreement, but the damage resulting from that agreement or its execution. The cause of action is not created by the conspiracy, but by the wrongful acts done by the defendants to the injury of the plaintiff, and a conspiracy is actionable only if the overt acts done pursuant to the common design proximately cause damage to the party bringing the action" (footnotes omitted)). Additionally, "no cause of action can exist in the

absence of an overt, tortious, or unlawful act committed in furtherance of the conspiracy." 16 Am. Jur. 2d at § 52 (footnote omitted).

2. The Parties' Arguments

a. Plaintiffs' Claims

Plaintiff assert conspiracy claims against the Inkster Defendants as follows:

> 221. The City of Inkster, Martin, Brown and Abdullah, and unknown members of the Inkster Police Department, agreed among themselves and the other named Defendants, in their individual capacities, to act to put Plaintiffs out of business and to further the overall objective of the conspiracy.
>
> 222. Martin, Brown and Abdullah, acting under color of law, with the illegal search and seizure, under the alleged bomb threat, was to injure Henry's and to remove protected First Amendment businesses from the City of Inkster, without appropriate legislation, and to deprive Hamilton of his First Amendment rights and to deprive him of his ownership of Henry's and Bogart's, including his investment in each.

FAC at ¶¶ 221-222. In their response brief, Plaintiffs summarize the evidence of a conspiracy involving the Inkster Defendants as follows:

> (1) That the Inkster Defendants, among themselves, created a plan to harass or shut down Henry's. The overt acts include the false bomb threat by Abdullah, which "justified" a search under false pretenses by Brown, who stole a tape, which was obtained by Martin, who then made a complaint to the MLCC, which was supported by perjured testimony;
>
> (2) That the Inkster Defendants conspired with the MLCC to shut down Hamilton's businesses. The overt acts include the above and the MLCC's eagerness to use evidence obtained unconstitutionally and supported by perjured testimony.

b. The Position of the Inkster Defendants

The Inkster Defendants make a number of arguments in support of their position that Plaintiffs' conspiracy claim is not viable. One of their arguments is that Plaintiffs have not suffered any monetary damages - a necessary element of a conspiracy claim.

c. Plaintiffs' Counter-Argument

Plaintiffs do not dispute the Inkster Defendants' position regarding the non-existence of monetary damages in this case. Rather, Plaintiffs contend that monetary damages are not a necessary element of a conspiracy claim. In support of their position, Plaintiffs rely upon Bloch v. Ribar, 156 F.3d 673, 679 (6th Cir. 1998) (emphasizing that injuries in the context of a § 1983 claim need not be monetary but rather may include impairment to reputation, personal humiliation, and mental anguish).

3. Discussion

As stated above, "a conspiracy is actionable only if the overt acts done pursuant to the common design proximately cause damage to the party bringing the action." 16 Am. Jur. 2d at § 53 (emphasis added). Here, Plaintiffs state that the overt act in furtherance of the conspiracy was the false bomb threat. Pls.' Br. at 4. Thus, in order to sustain a conspiracy claim premised upon the bomb scare, Plaintiffs must show that the bomb scare caused damages. As Plaintiffs correctly note, the damages need not be monetary.

Plaintiffs have not shown that they suffered any damages, monetary or otherwise, arising out of the bomb scare incident. First, Plaintiffs do not dispute the contention of the Inkster Defendants that no monetary damages were suffered from the bomb scare incident. Moreover, while Plaintiffs argue that the damages do not have to be monetary, they fail to

show that they suffered any non-monetary damages. Because Plaintiffs have failed to offer any evidence of damages resulting from the purported overt act done in furtherance of the alleged conspiracy, their conspiracy claim fails.

B. 42 U.S.C. § 1985(2)

1. Law

Generally, "42 U.S.C. § 1985 provides a private cause of action for conspiracy to interfere with civil rights." Molnar v. Care House, 574 F. Supp. 2d 772, 787 (E.D. Mich. 2008). Specifically, § 1985(2) states as follows:

> If two or more persons. . . conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or

> more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws.

42 U.S.C. § 1985(2).

The first clause of § 1985(2) "prohibits conspiracies to influence parties, witness, or jurors in federal court proceedings." Fox v. Mich. State Police Dep't, 2006 WL 456008, *3 (6th Cir. Feb. 24, 2006). "The second clause of § 1985(2) creates a cause of action against 'two or more persons' who 'conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws. . ..' Dallas v. Holmes, 2005 WL 1313801, *6 n.5 (6th Cir. May 12, 2005) (citing 42 U.S.C. § 1985(2)). "Under this clause . . . a plaintiff must demonstrate that there was 'some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action.'" Id. (citing Kush v. Rutledge, 460 U.S. 719, 726 (1983)).

2. Plaintiffs' Claims

Plaintiffs assert claims under § 1985(2) against the Inkster Defendants as follows:

> 233. As set forth above, after the initial complaint was filed, Inkster police officers continued to harass the dancers and patrons at Henry's and Bogart's.
>
> 234. That with the filing of the complaint in December of 2001, law enforcement officers of the City of Inkster have sought, contrary to 42 U.S.C. 1985 (2), to obstruct justice and intimidate witnesses and parties.
>
> 235. Police officers of the City of Inkster have and are approaching dancers and patrons and are intimidating same so as to force the dancers or patrons to testify in favor of the respective units of government and the Defendants associated therewith, and/or to refrain from testifying on behalf of Hamilton or the Plaintiff corporations and to deprive Hamilton and the corporations of equal protection of the law.
>
> 236. The conduct of the Inkster Defendants, in particular the law enforcement arms of Defendants, to intimidate witnesses and obstruct

> justice, will continue if they are not restrained and it will become impossible for Plaintiffs to present their case to this Court and Plaintiffs will be irreparably harmed as will the cause of justice and an injunction is necessary to prohibit Defendants from further harassment, intimidation and obstruction.

FAC at ¶¶ 233-236.

3. Discussion

While Plaintiffs discuss the law surrounding a § 1985(2) claim in their brief, they fail to apply the law to the facts of this case. The Court interprets Plaintiffs' failure in this regard as a tacit acknowledgment that no viable § 1985(2) claim exists against the Inkster Defendants. Although Plaintiffs have made very bald statements in their FAC, they have failed to proffer even a shred of evidence in support of their claim. The Court will grant summary judgment in favor of the Inkster Defendants on the § 1985(2) claim because it lacks any arguable basis in law or fact, is entirely unsupported by any evidence, and is frivolous.

C. Conversion and Taking[5]

1. Law

"Under Michigan law, conversion is defined generally as 'any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein.'" Murray Hill Publ'ns, Inc. v. ABC Comme'ns. Inc., 264 F.3d 622,637-38 (6th Cir. 2001) (quoting Sarver v. Detroit Edison Co., 571 N.W.2d 759, 761 (Mich. App.1997)). "The general rule for the measure of damages for conversion is the value of the converted property at the time of the conversion." Ehman v. Libralter Plastics, Inc., 523 N.W.2d 639, 639-640 (Mich. Ct. App. 1994) (citing Baxter v. Woodward, 158 N.W. 137 (1916)).

---

[5] In their brief, Plaintiffs discuss these two claims as if they are one claim. Insofar as Plaintiffs intend to assert two distinct causes of action, the takings claim will be dismissed because (1) it has not been separately briefed and (2) Plaintiffs have not explained what cause of action is intended.

In addition, as noted above, Plaintiffs have not specified whether they intend to bring a common law conversion claim or a statutory conversion claim or both. The Court will assume that Plaintiffs intended to bring both claims. The common law conversion claim is addressed in the body of this memorandum while the statutory claim is addressed in footnote six.

2. Plaintiffs' Claims

The factual basis underlying Plaintiffs' conversion claim, as described by Plaintiffs in their FAC, is as follows:

> 238. The individual named Inkster police officers, at all times mentioned herein, owed a duty to Plaintiffs not to steal, take, convert, interfere with Plaintiffs' business, commit malfeasance or violate Plaintiffs' civil rights. In each count listed hereinafter, including the instant count, the individual police officers breached their duty to Plaintiffs and Plaintiffs were injured. The conduct of the officers is not within the scope of their authority, not permitted by the Constitutions of the State of Michigan or of the United States and the individual police officers have no immunity of any nature.
>
> 239. The City of Inkster has no immunity. The City of Inkster had knowledge of the misconduct of the individual police officers and ratified and sanctioned their actions, violated, under color of law, Plaintiffs' constitutional and statutory rights, and the City of Inkster has no immunity in each count listed hereinafter, including the instant count.

> 240. Defendants have converted Plaintiffs' property for their own use and have exercised wrongful dominion over Plaintiffs' property without Plaintiffs' authorization or consent and upon demand has refused to return Plaintiffs' property and all copies that may have been made of the tape.
>
> 241. As a result of Defendants' actions, Plaintiffs have been damaged and injured in a sum in excess of $75,000 including loss of business, injury to reputation, attorney fees as it relates to the September 11, 2000 Administrative Hearing. Plaintiff Hamilton's investment in Henry's has been impaired and he has lost income as a result of Defendants' actions and conversion.
>
> 242. As a result of the actions and conversion of the officers of City of Inkster, Hamilton has been injured by a sum in excess of 1 million dollars.

FAC at ¶¶ 238-242. The Court notes at the onset that the conversion claim is poorly pled inasmuch as Plaintiffs have not even specified in the FAC what specific property was allegedly converted.

In their brief, however, Plaintiffs clear up the confusion. According to Plaintiffs,

> the Inkster Defendants conspired together to take the tape or approve and adopt the taking of the tape. Abdullah made the false bomb threat, Brown took the tape without permission, and Martin used the converted tape to make MLCC complaints. Martin clearly approved and ratified the taking of the tapes (as did the MLCC) by viewing it and sending the tape to the MLCC. Martin also converted the tape to his own use by removing it from Brown's drqwer [sic]. Presumably, Martin also received some gain from the conversion, even if only kudos from his employer or the MLCC. Therefore, all of the Inkster Defendants are liable for the conversion.

Moreover, Hamilton states in his deposition that the tape is the only property allegedly converted. See Hamilton Dep. (Dec. 11, 2006) at p. 508. For relief on their conversion claim, Plaintiffs seek "1 million dollars plus costs, interest and attorney fees plus punitive damages." See FAC at p. 43.

3. The Position of the Inkster Defendants

The Inkster Defendants argue that the conversion claim fails against Abdullah because there

is no evidence that he was involved in the taking of the tape. As to the conversion claims against Brown and Martin, the Inkster Defendants argue that Plaintiffs cannot establish that they are entitled to the damages sought and that the claims should therefore be dismissed. Importantly, however, the Inkster Defendants do not argue that Martin and Brown are not liable for conversion; they only argue that Plaintiffs are not entitled to the damages they seek.

D. Discussion

The common law conversion claim against Abdullah fails for the reason given by the Inkster Defendants - the record does not contain evidence that Abdullah handled the tape or otherwise had anything to do with taking it. Rather, Plaintiffs allege that Brown initially took the tape from Henry's, see FAC at ¶¶ 134-135, and that Martin subsequently took the tape from Brown's desk drawer and sent it to the MLCC. See id. at ¶ 143. Although Plaintiffs claim a conspiracy between the three officers to take the tape, there is no evidence in support of such a claim as it relates to Abdullah. That is, Plaintiffs have offered no proof that there was an agreement between Abdullah, on the one hand, and Martin and Brown, on the other hand, with regard to the taking of the tape.

Regarding the common law conversion claims against Martin and Brown, the Court agrees with the Inkster Defendants that Plaintiffs are not entitled to

the relief they seek. Hamilton testified as follows regarding the basis for the conversion claim:

Q: What personal property have [the Inkster Defendants] taken from you?

A: Just the tape.

Q: Is the tape worth $1 million?

A: Cost me that much.

* * * *

Q: Okay. You don't know the value of the tape; correct?

A: No.

Q: Would you rely on your accountant or attorneys for the estimation of the value of that tape?

A: I'm sure they are basing it on the fact of the loss and everything else, yes.

Q: So really not the value of the physical tape itself, you're referring to its, the effect that that tape had after the tape was taken, is that your claim?

A: Right.

Hamilton Dep. (Dec. 11, 2006) at pp. 508-509. Thus, it is clear that the basis for the damages sought is not the value of the tape, but rather the trouble caused by the tape when it was admitted in the proceedings before the MLCC as evidence of liquor license violations at Henry's. However, this is not how damages are measured in the context of a conversion claim. "The general rule for the measure of damages for conversion is the value of the converted property at the time of the conversion." Ehman, 523 N.W.2d at 639-640 (citing Baxter, 158 N.W. at 137). Here, Plaintiffs have not established that anything other than the general rule should apply. Therefore, if Plaintiffs can establish the elements of a common law conversion claim against Brown and Martin, they are entitled to nominal damages in the amount of the fair market value of the tape at the time it was taken - probably a dollar or two, at most. Because Plaintiffs do not seek nominal damages for the fair market value of the videotape, but rather seek much more extensive damages to which they are not entitled, the common law conversion claim will be dismissed.[6]

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[6] In their brief, Plaintiffs cite law relating a statutory conversion claim. "In addition to the common-law [conversion] claim, Michigan provides a statutory cause of action against those who aid in the conversion of property." Entech Personnel Servs., Inc. v. Feliciano Transport, Inc., 2004 WL 2889874, *6 (Mich. Ct. App. Dec. 14,2004) (per curiam) (emphasis added). As explained by the Michigan Court of Appeals,

> Statutory conversion is provided for at MCL 600.2919a. Pursuant to MCL 600.2919a, a person who is damaged as a result of another person's buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property when the person buying, receiving, or aiding in the concealment of any stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted, may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney's fees. . . . MCL 600.2919a is not designed to provide a remedy against the individual who has actually stolen, embezzled, or converted the property, as the actions proscribed–buying, receiving, or aiding in the concealment–all occur after the property has been stolen, embezzled, or converted by the principal.

Palazzolo v. Nitzkin, 2005 WL 221431, *3 (Mich. Ct. App. Jan. 7, 2005) (emphasis in original). Here, to the extent Plaintiffs assert a statutory conversion claim against Martin and Brown, the claim is not cognizable because Plaintiffs allege that both were principals, i.e., the people who actually did the stealing, and "MCL 600.2919a is not designed to provide a remedy against the individual who has actually stolen." Id. To the extent Plaintiffs assert a statutory conversion claim against Abdullah, the claim fails because there is no evidence that he bought, received, or aided in the alleged concealment of the tape.

Larceny is a crime and not a private cause of action. "[A] private citizen lacks a judicially cognizable interest in the prosecution or non prosecution of another." Diamond v. Charles, 476 U.S. 54, 64 (1986); see also Providence Baptist Church v. Hillandale Comm., Ltd., 425 F.3d 309, 317 (6th Cir. 2005). "[T]he general rule is that a private cause of action is not maintainable under a criminal statute." Am. Postal Workers Union v. Indep. Postal Sys. of Am., 481 F.2d 90, 93 (6th Cir. 1973); see also Ticor Title Ins. Co. v. Nat'l Abstract Agency, 2007 WL 2710113, **9-10 (E.D. Mich. Sept. 13, 2007) (granting summary judgment because "the statutes for larceny and embezzlement are bare criminal statutes containing no indication that a private right of action is available"). Plaintiffs' larceny claim is frivolous and must be dismissed for failure to state a claim.

V. Conclusion

For the reasons stated above:

1. All claims against the City of Inkster are DISMISSED.

2. The First Amendment claims asserted by the individual plaintiffs are DISMISSED.

3. John Hamilton, the John L. Hamilton Retained Annuity Trust, John Hamilton, Jr., Jeremy Hamilton, and Michael Hamilton are DISMISSED as plaintiffs.

4. The takings claim asserted against the Inkster Defendants is DISMISSED.

5. The conversion claim asserted against the Inkster Defendants is DISMISSED.

6. The larceny claim asserted against the Inkster Defendants is DISMISSED.

7. Summary judgment is granted in favor of Abdullah, Martin, and Brown. All claims against these defendants are DISMISSED.

SO ORDERED.[7]

s/ Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: August 26,2009

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, August 26, 2009, by electronic and/or ordinary mail.

s/ Julie Owens
Case Manager, (313) 234-5160

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[7]This memorandum and order, together with the memorandum and order of August 18,2009 (Dkt. 333), disposes of the case.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN L. HAMILTON, et al.,
Plaintiffs,

Case No. 01-CV-74698

HONORABLE AVERN COHN

v.

CITY OF ROMULUS and MICHAEL ONDEJKO,

and

VAN BUREN TOWNSHIP, MARC ABDILLA, BRYCE KELLEY and JOHN DOE ENFORCEMENT OFFICERS,
Defendants.

_____/

JUDGMENT

For the reasons stated in the Memorandum and Order entered and filed on August 18, 2009, judgment is entered in favor of the defendant's and the case is DISMISSED as to the above named defendants only.

DAVID WEAVER

Dated: August 21, 2009

By s/ Julie Owens
Deputy Clerk

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, August 21, 2009, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

JO-BET, INC., GARTER BELT, INC., HAMILTON'S HENRY THE VIII LOUNGE, HAMILTON'S BOGART, INC., JOHN HAMILTON, JOHN HAMILTON, JR., JEREMY HAMILTON, MICHAEL HAMILTON, JOHN L. HAMILTON RETAINED ANNUITY TRUST,

Plaintiffs,

Case No. 01-CV-74698
HONORABLE AVERN COHN

v.

CITY OF ROMULUS and MICHAEL ONDEJKO,

and

VAN BUREN TOWNSHIP, MARC ABDILLA, BRYCE KELLEY, and JOHN DOE ENFORCEMENT OFFICERS,

and

CITY OF INKSTER, PAUL MARTIN, KENNETH BROWN, and ANTONY ADBULLAH,

Defendants.

_____/

MEMORANDUM AND ORDER (1) DISMISSING FIRST AMENDMENT CLAIMS. (2) DISMISSING ALL CLAIMS AGAINST THE JOHN DOE ENFORCEMENT OFFICERS. and (3) GRANTING SUMMARY JUDGMENT IN FAVOR OF THE CITY OF ROMULUS. MICHAEL ONDEJKO. VAN BUREN TOWNSHIP. MARC ABDILLA. and BRYCE KELLEY

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I. Introduction[1]

This is civil rights case under 42 U.S.C. §§ 1983 and 1985(2) with pendent state law claims. Broadly stated, Plaintiffs claim that defendants conspired to deprive them of their right to operate sexually oriented businesses ("SOBs"); namely, four strip

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[1]The Court originally scheduled this matter for hearing. Upon review of the parties' papers, however, the Court finds that oral argument is not necessary. See E.D. Mich. LR 7.1 (e)(2).

clubs.[2] Plaintiffs seek injunctive relief and damages. Plaintiffs are as follows:

(1) Jo-Bet, Inc., d/b/a Henry the VII South - An adult entertainment establishment located in the City of Southgate.

(2) The Garter Belt, Inc., d/b/a Legg's Lounge ("Leggs") - An adult entertainment establishment located in Van Buren Township ("VBT").

(3) Hamilton's Henry VIII Lounge - An adult

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[2]SOB is defined by a Van Buren Township ("VBT") ordinance as

> an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center, or similar establishment, or any place that permits patrons to be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for electronic transmission over the World Wide Web.

See VBT Ex. 2 p. 7.

Strip club is defined by Wikipedia as "a nightclub or bar that offers striptease (the erotic removal of a performer's clothing) and possibly other related services such as lap dances."

entertainment establishment located in the City of Inkster.

(4) Hamilton's Bogart, Inc., d/b/a Bogart's Joint - An adult entertainment establishment located in the City of Inkster.

(5) John Hamilton - Sole stockholder of the above-listed corporations.

(6) John Hamilton Trustee of the John L. Hamilton Retained Annuity Trust.

(7) John Hamilton, Jr. - John Hamilton's son.

(8) Jeremy Hamilton - John Hamilton's son.

(9) Michael Hamilton - John Hamilton's son.

Plaintiffs filed their original complaint on December 12, 2001. Since that time, several amended complaints have been filed. The complaint currently governing this action is the Corrected Fourth Amended Complaint ("FAC"). See Dkt. 131.

The defendants who are still party to this case are as follows:

Romulus Defendants:

(1) City of Romulus
(2) Michael Ondejko

Van Buren Township Defendants:

(3) Van Buren Township
(4) Marc Abdilla
(5) Bryce Kelley
(6) Unknown John Doe Enforcement Officers[3]

Inkster Defendants:

(7) City of Inkster
(8) Paul Martin
(9) Kenneth Brown
(10) Antony (Tony) Abdullah

The individually-named defendants are being sued in their individual capacities only.

Now before the Court are the following three motions: (1) the Romulus Defendants' Motion for Summary (Dkt. 251), (2) the VBT Defendants' Motion for Summary Judgment (Dkt. 255), and (3) the Inkster Defendants' Motion for Summary Judgment (Dkt. 252). This memorandum and order addresses the first two motions only. The Inkster Defendants' motion will be addressed by a separate memorandum. For the reasons that follow, the Court will grant the summary judgment motions of the VBT Defendants and the Romulus Defendants.

---

[3]Because these defendants have not been identified, all claims against them will be dismissed.

II. Background

Four strip clubs are involved: (1) Henry the VIII South, owned by J-Bet, Inc., (2) Leggs Lounge ("Leggs"), owned by the Garter Belt, Inc., (3) Henry the VIII Lounge, owned by Hamilton's Henry the VIII Lounge, Inc., and (4) Bogart's Joint, owned by Hamilton's Bogart, Inc. John Hamilton (Hamilton) is the sole stockholder of the four corporations. The parties-particularly, Hamilton and VBT -have a very long and complicated history of conflict dating back to 1998. Generally, the conflict stems from allegations that VBT, sometimes on its own and other times in collusion with other municipalities, took steps aimed at putting Hamilton's strip clubs out of business.

The facts and background information that follow are taken, sometimes verbatim, from the parties' joint submission of material facts not in dispute.

A.

At a regular meeting on September 1, 1998, VBT's Board of Trustees adopted Resolution 98-34. See VBT Ex. 1. The effect of the resolution was to suspend the submission or receipt of projects which would require site plan review, re-zoning, housing development, special approval use and the like (with

certain exceptions) for a period of 182 calendar days to commence on September 2, 1998 and to run through March 2, 1999 ("the Moratorium"). The purpose of the Moratorium was to assist in the revision and updating of the VBT's master plan and zoning ordinance. The parties disagree as to whether the Moratorium was directed at SOBs.

During the moratorium period, VBT conducted a comprehensive review of its Master Plan and Zoning Ordinance and adopted a series of new SOB ordinances, all of which became effective by March 11, 1999. See id. at Exs. 2-5, 70.

By letter dated August 29, 2000, efendant Bryce Kelley (Kelley), VBT's Director of Planning and Economic Development, informed Hamilton that Leggs was not in compliance with the new and revised SOB ordinances and directed Hamilton to come in compliance within 30 days. See id. at Ex. 9. VBT claimed that, through Hamilton, Leggs refused to comply with the SOB ordinances, particularly the Nudity on Licensed Premises Ordinance, see VBT Ex. 3, because Leggs dancers continued to dance virtually naked, had illegal physical contact with patrons, and engaged in a host of other prohibited activities.

B.

Believing that Leggs was not in compliance with applicable VBT SOB ordinances, VBT took legal action in Wayne County Circuit Court on November 6, 2000, seeking a permanent injunction mandating Leggs' compliance. See Charter Township of Van Buren vs. The Garter Belt. Inc., No. 00-036479; VBT Ex. 10. The parties refer to this lawsuit as "Leggs I" and the Court will do the same. VBT states that it filed Leggs I because reports from members of the VBT community, together with subsequent investigative work byVBT employees and private detectives, revealed that certain ordinances, most notably, VBT's Nudity on Licensed Premises Ordinance, were being violated at Leggs.

Leggs filed a counter-complaint in Leggs I in which it sought to have the VBT SOB ordinances invalidated on constitutional grounds. See VBT Ex. 11.[4]

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[4]The claims contained in Leggs' counter-complaint were originally brought as a separate action in this district. See The Garter Belt. Inc. vs. Charter Township of Van Buren, No. 00-CV-75630 (E.D. Mich.) (Steeh, J.) The parties refer to this action as "Leggs II" and the Court will do the same. Leggs II, however, was dismissed without prejudice on abstention grounds, at which point Leggs filed its counter-complaint in Leggs I containing the same claims as those brought in Leggs II.

VBT prevailed in Leggs I, securing the permanent injunction it sought and also the dismissal with prejudice of the counter-complaint filed by Leggs. See VBT Ex. 12. Specifically, the trial court determined that "the ordinance in question is without constitutional or legal infirmity" and "permanently enjoined [Leggs] from violating in any manner or form the. . . ordinance entitled Nudity on Licensed Premises." Id. The trial court's ruling was affirmed on appeal, see Charter Township of Van Buren vs. The Garter Belt. Inc., 673 N.W.2d 111 (Mich. Ct. App. 2003), the Michigan Supreme Court denied Leggs' application for leave to appeal, see Charter Township of Van Buren v. Garter Belt. Inc., 682 N.W.2d 86 (Mich. 2003), and the United States Supreme Court denied Leggs' petition for writ of certiorari, see Garter Belt. Inc. v. Charter Township of Van Buren, 543 U.S. 1002 (2004). Thus ended Leggs I.

C.

On April 21,2002, James D. Cable (Cable), a patron of Leggs, died while he was being entertained at Leggs. See id. at Ex. 40. Following Cable's death, a Leggs dancer, Wendy Pomerico (Pomerico), contacted VBT's Department of Public Safety and reported that Cable's body had been tampered with

after his death. Pomerico also stated that she and other dancers were being forced by Hamilton to serve as prostitutes providing sexual favors to various Leggs patrons and that, behind the scenes, Leggs was a house of prostitution.

The VBT Police Department, with the aid of members of a special police task force from the City of Romulus, embarked upon a full scale investigation of illegal activity at and associated with Leggs. See VBT Ex. 41. This investigation included the use of confidential informants who were solicited to engage in acts of fellatio, intercourse, and other sex acts by dancers at Leggs for cash, and the investigation also relied on undercover police officers who also were propositioned to engage in sex acts, including hands-on lap dances for a fee.

D.

On May 3, 2002, officers from VBT's Police Department and the City of Romulus' Police Department, in a cooperative effort, raided Leggs and an adjacent property pursuant to a valid search warrant. The search warrant was secured, in part, on Pomerico's statements to police regarding the alleged

post-mortem tampering of Cable's body and prostitution at Leggs.[5]

During the raid, VBT and Romulus police officers seized certain property as part of its ongoing investigation into criminal activity at Leggs. Of particular importance for the purposes of this case is that VBT and Romulus seized approximately $1.6 million in cash from a safe located inside a residence adjacent to Leggs. Hamilton's nephew, Billy Martin, resided in the residence. As will be discussed in greater detail below, this money was eventually returned.

At some point on May 3, 2002, Kelley was notified of the raid. See Kelley Dep. at pp. 22-24. Kelley appeared at the scene "pretty close to midnight," while the police were actively investigating and after the warrants were served. Kelley testified that, other than this time, he had never before appeared at the scene where the police are serving a warrant but that he appeared this time out of curiosity. Id. at p. 23. Kelley further testified

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[5]On April 22, 2002, prior to the raid, an autopsy report was prepared regarding Cable's death. The report states that Cable died of natural causes from atherosclerotic cardiovascular disease. See Pls.' Ex. 32.

that he "walked through the [Leggs] premises" with his camera, which he "always ha[s]." Id. at p. 24.

Detective Louis Keele (Keele) of VBT participated in the Leggs raid. At his deposition, Keele testified that he may have informed Leggs' customers and employees that a "homicide" was being investigated despite knowing that Cable's death had been classified by the coroner as "natural." The following dialogue occurred during Keele's deposition:

> Q: Did you, at any time when you were interviewing these patrons and dancers, inform them that you were investigating a homicide?
>
> A: Yes, I believe we did.
>
> Q: And not only you but the other officers from Van Buren said that "we're investigating a homicide"?
>
> A: The execution of the search warrant in regards to a homicide, yes.
>
> Q: Now, at the time that you served those search warrants, were you aware that there would have been an autopsy or at least a postmortem examination which showed that the alleged homicide victim has died of a congenital heart defect?

A: I know right now. I don't know for sure if I knew that at the time. I believe so. I believe I did.

Q: You believe you knew it at the time of the search warrant?

A: He died of a heart attack. I believe we did have the official word, but I can't say for certain.

Q: Just so it's clear, you believe you had the official word he died of a heart attack before you served the search warrant on Legg's [sic] on May 3rd, 2002?

A: I believe so.

Keele Dep. at pp. 13-14. Moreover, in the written reports regarding the Cable incident, VBT officers classify the "nature of incident" and "offense" as "Prostitution/Wrongful Death" and "death investigation," respectively. See Pls.' Ex. at 30, pp.1-2. As explained by the VBT Defendants: "[This] is precisely what was being investigated, and there is nothing untoward or improper about it based on the information available at the time."

Following the raid, Leggs, along with various individuals whose property had been seized, filed a

lawsuit in Wayne County Circuit Court against VBT, its police department, one of its detectives (defendant Marc Abdilla), the City of Romulus, and one of its detectives (defendant Michael Ondejko). See Martin, et al. v. Charter Township of Van Buren, et al., No. 02-218416. Generally, the Martin plaintiffs alleged multiple defects regarding the search warrant itself and its execution. The Martin plaintiffs also alleged negligence and defamation, and sought the return of property seized during the raid. See VBT Ex. 30.

Ultimately, the Martin plaintiffs were unsuccessful. On December 18, 2002, the trial court issued an order denying the return of the seized property and dismissing with prejudice all claims against each of the Martin defendants. See id. at Ex. 32. The Martin plaintiffs then filed a Claim of Appeal with the Michigan Court of Appeals, see id. at Ex. 33, which was eventually dismissed by stipulation of the parties. See id. at 35. This ended Martin.

E.

Shortly after the raid, Abdilla, on behalf of VBT, contacted Ondejko of the Romulus Police Department to discuss a request made by VBT for assistance in the Leggs investigation. VBT requested the assistance of the Romulus because the latter department, unlike the former, had a pre-existing

special investigations unit (SIU) and was therefore more experienced in handling complex investigations such as the Leggs matter. Ondejko, who is now retired, was a member of Romulus' SIU.

Preliminary issues discussed between VBT and Romulus included recommendations regarding potential forfeiture of the seized money, the complexity of the investigation and the time commitment, and the manpower and expense that would be incurred in order to effectively conduct an investigation of the magnitude anticipated.

On May 9,2002, Romulus Police Chief Charles Kirby authorized Ondejko and other members of the SUI to assist VBT in their investigation of the Leggs matter. On May 15, 2002, the two departments entered into a written "equitable sharing" arrangement. The body of the agreement, which was written by Ondejko and addressed to Christopher Elg, the Director of VBT's Police Department, reads as follows:

> On May 9, 2002, I met with your detectives at their request, to give assistance on their investigation into the case involving LEGG's LOUNGE [sic]. (Case 02-2110). They informed me that there was approximately 1.6 million in cash seized from the residence of a bar manager and were

looking for guidance on keeping the money.

We discussed the methods of investigation that would be needed to provide your Department with the best grounds for forfeiting this currency and the large potential for additional seizures if these methods were followed. I believe a racketeering and conspiracy investigation will provide that foundation. To conduct such an investigation will require the efforts of more than two detectives and the training, equipment and experience that our Department can afford you. At the conclusion of the meeting you contacted Chief Kirby and my unit was given the permission to join your detectives in this endeavor. Chief Kirby and the City of Romulus only ask that we enter into an equitable sharing agreement. With your permission we would like to make the following request;

The City of Romulus will receive ten percent (10%) of the net proceeds derived from the forfeiture or other consent agreement in the settlement involving the approximately 1.6 million seized from 3918 Merriman in the City of Wayne, MI. This percentage will be

> based on the amount left after prosecution costs are determined and will be in addition to actual cash expenditures by Romulus SIU on behalf of the Van Buren Township Police investigators. Receipts will be provided explaining those expenses.
>
> Further, the City of Romulus will receive forty percent (40%) and Van Buren Township sixty percent (60%) of all proceeds from seizures that occur after our commitment to this joint investigation was made on May 9, 2002. This figure also will be based on net proceeds minus prosecution costs.

Ondejko testified during his deposition that the Romulus Police Department would have assisted VBT with the investigation even absent the equitable sharing agreement. Ondejko Dep. at p. 42. He also testified that equitable sharing agreements such as the one between Romulus and VBT are "common practice" and that Romulus "had similar agreements with the State Police DRANO units as well as DEA" Id. at p. 44. The defendants also proffer the affidavit of an expert witness, Daniel J. Grant, who opines that:

5. Equitable sharing agreements such as the Joint Investigation Agreement between the Van Buren Township and the City of Romulus police departments, including those often entered into after an asset seizure, are very common when multiple agencies are invovling in investigations which may result in the forfeiture of seized assets and are authorized by both Michigan and federal statutes, including MCLA 750.159i.

6. There is nothing even remotely conspiractal about the Joint Investigation Agreement between the Van Buren Township and City of Romulus police departments, and, as a member of the Michigan Asset Forfeiture Committee assigned by the Michigan Association of Chiefs of Police, to conduct training seminars for police officers, police investgators and prosecuting attorneys, I encourage the use of such equitable sharing agreements to alleviate any disputes that might arise relating to the dispersal of assets once/should assets be forfeited following adjudication.

VBT Ex. 45.

On the other hand, plaintiffs offer the written report of their expert, Michael Levine, who says just the opposite:

> The contents of this letter [the equitable sharing agreement] . . . are strongly evincive [sic] of a misuse of police power, authority and force, for the purpose of financial gain. The letter dismissively discusses appropriate and/or "acceptable" legal pretexts. . . for the seizure of PLAINTIFF [sic] assets as well as the distribution of same between DEFENDANT CONSPIRATORS, describing as a "racketeering" investigation what the totality of evidence reviewed this file is in reality an investigation into the circumstances surrounding a fatal heart attack. What further supports all opinions that this letter is a sham document whose main purpose is in reality the dividing of ill-gotten gains from an illegal act, under color of law, is the deceptive and. . .perjured testimony, describing the investigation as a "homicide" investigation. I have been privy to and have reviewed many agreements between law enforcement agencies that discuss the division of seized assets, however, they are specific in nature as to the crimes involved and

> generally are overall statements of policy citing specific law as justification. In the instant Letter of Agreement, There is no mention of any apparent legal grounds for said seizure and sharing, as a trained reviewer would expect. Instead, the letter makes apparent that the money is the target of the law enforcement action and not it's natural bi-product.[6]

(certain emphasis deleted).

In any case, the parties agree that "[i]t is not unusual for law enforcement officers to share resources, including personnel, with neighboring municipalities."

F.

On June 11,2002, the Forfeiture Unit of the Wayne County Prosecutor's Office filed a forfeiture complaint in Wayne County Circuit Court seeking forfeiture of the property seized during the May 3, 2002, raid. See People of the State of Mich. ex reI. Michael E. Duggan. Wayne County Prosecutor vs.

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[6]The conflicting views of the propriety of the agreement do not create a genuine issue of material fact requiring resolution by trial. Levine's opinion is highly subjective and argumentative and does not obviate the fact that sharing agreements are regularly entered into.

$1,490.00 U.S. Currency, $35,000.00 U.S. Currency, et al., No. 02-219794; VBT Ex. 53. This case was eventually dismissed with prejudice by stipulation of the parties and the money returned to Hamilton, minus $6,490 in costs.

On August 6, 2002, the Wayne County Prosecutor's Office filed a complaint in Wayne County Circuit Court for abatement of nuisance seeking to padlock Leggs. See People of the State of Mich. ex rel. Michael E. Duggan, Wayne County Prosecutor vs. $1,490.00 U.S. Currency, $35,000.00 U.S. Currency, et al., No. 02-227301; VBT Ex. 54. This case was dismissed with prejudice by the parties with the finding that the alleged nuisance activity has been abated.

G.

Meanwhile, on August 16, 2002, misdemeanor complaints charging prostitution were issued against eleven Leggs dancers, including Samantha Bates ("Bates"). See VBT Ex. 46. On September 16, 2002, Bates filed a Complaint for Declaratory Judgment, Violation of Civil Rights, Permanent Injunction, and attorney fees in this court. See Bates v. Township of Van Buren, No. 02-73692 (E.D. Mich.) (Cohn, J.); VBT Ex. 55. Bates challenged VBT's Nudity on Licensed Premises Ordinance on various

constitutional grounds, but lost when the Court granted summary judgment in favor of VBT on res iudicata grounds. On appeal, the Sixth Circuit affirmed the dismissal, see Bates v. Township of Van Buren, 459 F.3d 731 (6th Cir. 2006), and the Supreme Court denied Bates' petition for writ of certiorari. See Bates v. Township of Van Buren, 550 U.S. 935 (2007). Thus ended Bates.

H.

On November 3, 2003, the Michigan Attorney General's Office brought state law RICO charges against Hamilton and others in the 34th Judicial District. See Pls.' Ex. 41. On June 14, 2004, the trial court issued an order dismissing with prejudice the charges against Hamilton. See id. at 42. The parties agreed by stipulated order that the approximately $1.6 million seized in the raid would be returned.

III. Dismissal of Individual Plaintiffs

Before addressing the motions for summary judgment, the Court first addresses the ability of the individual plaintiffs to sue. As stated above, plaintiffs are four corporations, four individuals, and one trust. The Romulus Defendants and the VBT Defendants argue that only the four corporations have standing to sue and that the remaining plaintiffs must be dismissed. Plaintiffs disagree, arguing that the

individual plaintiffs and the trust have the ability to sue because defendants violated their freedom to associate.

As stated by the Fifth Circuit and quoted with approval by the Sixth Circuit in Canderm Pharmacal. Ltd. v. Elder Pharms.. Inc., 862 F.2d 597, 602-603 (6th Cir. 1988),

> [t]he general rule is, of course, well established that an action to redress injuries to a corporation, whether arising out of contract ortort, cannot be maintained by a stockholder in his own name but must be brought in the name of the corporation, since the cause of action being in the corporation, the stockholder's rights are merely derivative and can be asserted only through the corporation. The general rule is applicable in cases where the individual is the sole stockholder.

Schaffer v. Universal Rundle Corp., 397 F.2d 893,896 (5th Cir. 1968) (footnote omitted).

Moreover,

> it is universal that where the business or property allegedly interfered with by forbidden practices is that being done and carried on by a corporation, it is

> that corporation alone, and not its stockholders (few or many), officers, directors, creditors or licensors, who has a right of recovery, even though in an economic sense real harm may well be sustained as the impact of such wrongful acts bring about reduced earnings, lower salaries, bonuses, injury to general business reputation, or diminution in the value of ownership.

Martens v. Barrett, 245 F.2d 844, 846 (5th Cir. 1957) (footnotes omitted) (quoted with approval by the Sixth Circuit in Canderm Pharmacal, Ltd., 862 F.2d at 603).

This case involves several claims; however, plaintiffs do not clarify which claims are brought by which plaintiffs. Applying the law discussed in the preceding paragraph, it is clear that the individual plaintiffs and the trust lack standing to assert a conspiracy claim, or any other claim to redress injuries to the corporate entities, because their rights are derivative of those of the corporate entities.

However, the individual plaintiffs may properly bring a claim that defendants violated their freedom to associate under the First Amendment because that is a claim belonging to them and not the corporate entities. However, the Court will

summarily dismiss the First Amendment claims because the individual plaintiffs claim that their right to associate was violated – not by any of the defendants who remain party to this action – but rather by the Michigan Liquor Control Commission (HMLCC"), a former defendant with which plaintiffs have settled. See Dkt. 330.[7] The Court will decline to dismiss the individual plaintiffs from the case at this

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[7]The Court notes that the individual plaintiffs baldy assert in the FAC that their right to associate was violated by the Romulus and VBT Defendants. However, in their brief, they state that their right to associate was violated Has a result of liquor license denials and liquor license stipulations that prohibited John Sr. or his wife Betty from entering the premises, or assisting in the operation of any of their son's licensed businesses." Pls.' Br. at 27. The individual plaintiffs have not sufficiently alleged that the defendants who, to date, remain party to this action, had anything to do with these "denials" and "stipulations." It would appear, as the Romulus Defendants note, that "the denials and/or stipulations on which [Plaintiffs'] claims are based were exclusively governed and/or imposed. . . by the MLCC." To the extent the individual plaintiffs argue that the Romulus Defendants and/or the VBT Defendants are liable under the First Amendment because they are the MLCC's co-conspirators, this argument fails because the individual plaintiffs have offered no evidence in support of such an extraordinary claim. Accordingly, the Court will dismiss the attenuated First Amendment claims brought under 42 U.S.C. § 1983 against the Romulus Defendants and the VBT Defendants.

time, however, because it has not yet addressed their First Amendment claims against the Inkster Defendants. For the purposes of this memorandum and order, any reference to "Plaintiffs" from this point forward is a reference to the corporate plaintiffs only.

IV. Analysis

A. Plaintiffs' Claims, Generally

Boiled down, Plaintiffs claim that the Romulus Defendants and the VBT Defendants decided they would proceed with a racketeering and conspiracy investigation – not because it was warranted – but because these charges would provide the best foundation for allowing Romulus and VBT to keep the money seized during the May 3, 2002, raid of Leggs.

Plaintiffs assert four claims against the Romulus Defendants: (1) conspiracy, (2) First Amendment violations, 42 U.S.C. § 1983, (3) 42 U.S.C. § 1985(2), and (4) tortuous interference with a business expectancy.

Plaintiffs assert the same four claims against the VBT Defendants, plus claims for conversion and "taking."

The Court has already adjudicated Plaintiffs' FirstAmendment claims in Defendants' favor. See

supra at p. 16 n.7. The Court will first address those claims that are common to both categories of defendants (conspiracy, 42 U.S. C. § 1985(2), and tortuous interference with a business expectancy). The Court will then address Plaintiffs' remaining against the VBT Defendants (conversion and taking).[8]

A. Conspiracy

1. Law

As stated by the Sixth Circuit,the standard for proving a conspiracy under § 1983 is as follows:

> A civil conspiracy is an agreement between two or more persons to injure another by unlawful action. Express

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[8]Before doing so, the Court notes that although the Romulus Defendants, on the one hand, and the VBT Defendants, on the other hand, have filed separate motions for summary judgment, many of their arguments-but not all of them-overlap. For example, generally speaking, both categories of defendants argue that Plaintiffs' various claims fail on the merits under Rules 12(b)(6) and 56. However, the Romulus Defendants argue that Plaintiffs' claims against Ondejko are time-barred while the VBT Defendants do not rely on a statute of limitations argument. Moreover, the VBT Defendants argue that all claims against the VBT Defendants are barred by the doctrine of res iudicata while the Romulus Defendants do not.

> agreement among all the conspirators is not necessary to find the existence of a civil conspiracy. Each conspirator need not have known all of the details of the illegal plan or all of the participants involved. All that must be shown is that there was a single plan, that the alleged coconspirator shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy that caused injury to the complainant.

Hooks v. Hooks, 771 F.2d 935, 943-944 (6th Cir. 1985).

The standard is similar under Michigan law: "A conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a purpose not unlawful by criminal or unlawful means." Fenestra Inc. v. Gulf Am. Land Corp., 141 N.W.2d 36, 48 (Mich. 1966). Additionally, under Michigan law,

> at the core of an actionable civil conspiracy is a question of damages. This facet of the law of conspiracy is accurately summed up in the case of Roche v. Blair: "The law is well established that in a civil action for damages resulting from wrongful acts alleged to have been committed in

> pursuance of a conspiracy, the gist or gravamen of the action is not the conspiracy but is the wrongful acts causing the damages. The conspiracy standing alone without the commission of acts causing damage would not be actionable. The cause of action does not result from the conspiracy but from the acts done." In the case of Auto Workers' Temple Ass'n v. Janson, the point is made more succinctly: the foundation of the action is the damage and not the conspiracy.

Id. at 48-49 (citations omitted). See also 16 Am. Jur. 2d Conspiracy § 53 (t]he gist of a civil conspiracy is not the unlawful agreement, but the damage resulting from that agreement or its execution. The cause of action is not created by the conspiracy, but by the wrongful acts done by the defendants to the injury of the plaintiff, and a conspiracy is actionable only if the overt acts done pursuant to the common design proximately cause damage to the party bringing the action" (footnotes omitted) (emphasis added)).

2. The Parties' Arguments

a. Plaintiffs' Claims

Generally speaking, Plaintiffs allege that "[VBT], upon discovering Hamilton's money, enlisted

the aid of the City of Romulus and Ondejko to further the desire to keep Hamilton's money and to put Hamilton out of business." FAC at ¶ 181. The money to which Plaintiffs refer is the $1.6 million seized from the residence of Hamilton's nephew, Billy Martin, pursuant to a search warrant.[9] Plaintiffs further allege that "each community [Romulus and Van Buren Township] is a spoke of a hub and spoke conspiracy" and that "each community took overt actions designated for one object, to put Hamilton and his corporations out of business." Id. at ¶ 191.

b. The Position of the Romulus Defendants

The Romulus Defendants argue first that the claims against Ondejko are time-barred under Michigan's three-year statute of limitations governing personal injury claims. See Mich. Compo Laws § 600.8505(9).

Next, the Romulus Defendants argue that Plaintiffs have failed to state a conspiracy claim on which relief can be granted because Plaintiffs (1) "do not allege any facts that suggest an agreement and/or 'meeting of the minds' . . . 'to put Plaintiff out of business,'" and (2) "have failed to allege or establish

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[9]Plaintiffs concede that the money was seized pursuant to a search warrant, but claim that the search warrant was obtained through perjured testimony.

that an illegal agreement existed between Romulus and/or any other Defendants" (emphasis in original).

Alternatively, relying on deposition testimony as described below, the Romulus Defendants argue that summary judgment in their favor is appropriate on Plaintiffs' conspiracy claim. Specifically, the Romulus Defendants cite the deposition testimony of Hamilton:

> Q: Are you aware of anyone associated with the City of Romulus that ever issued any public statements either through the radio or press that indicated or admitted they were trying to put you out of business?
>
> A: I don't think anyone's ever admitted they were going to put me out of business.
>
> ****
>
> A: I don't believe Romulus did make that statement, no.
>
> Q: Are you aware from anyone from Romulus, including Detective Ondejko, that ever publicly stated they're trying to put you out of business

A: Not to my knowledge.

Q: Did anyone from the City of Romulus ever make any public derogatory statements against you?

A: Not that I can recall.

****

Q: Romulus knew of Van Buren's desire to put Plaintiffs out of business, what facts to you have in support of that statement?

A: I really don't, I don't really, don't know, just talk. Just policeman talking, that's all.

****

Q: And my question to you is any specific facts in support of that statement as it relates to Romulus?

A: No.

Hamilton Dep. at pp. 37, 51-52. Defendants also rely on the deposition testimony of John Hamilton, Jr., who testified that he has no personal knowledge of facts supporting the claims asserted against Ondejko

in the FAC. See John Hamilton, Jr. Dep. at pp. 25-26. Moreover, Jeremy Hamilton testified similarly:

> Q: What facts do you have or personal knowledge that anyone from Romulus was involved in the conspiracy to put your father out of business?
>
> A: I have none.
>
> ****
>
> Q: What facts do you have or personal knowledge that anyone from Romulus and/or Detective Ondejko were involved with other municipalities involved in this case to further the objective of a conspiracy against your father?
>
> A: I have none.

Jeremy Hamilton Dep. at p. 36.

Finally, Defendants argue that the equitable sharing agreement between Romulus and VBT is not an illegal agreement and that, in fact, such agreements are commonplace when law enforcement agencies agree to assist each other. The Romulus Defendants state that the agreement does "does not speak in any fashion to any objective specifically aimed at putting Hamilton and/or any of his business

entities 'out of business,'" rather, "[i]t simply references methods by which to deal with the 1.6 million dollars that had already been seized by VBT as well as the potential for forfeiture of additional funds in the future."

c. The Position of the VBT Defendants

The VBT Defendants argue that Plaintiffs' conspiracy claims fail under Rules 12(b)(6) and 56 for many of the same reasons as argued by the Romulus Defendants. The VBT Defendants do not assert a statute of limitations argument. The VBT Defendants do, however, argue that Plaintiffs' claims against the VBT Defendants are barred by the doctrine of res judicata. Specifically, the VBT Defendants claim that Leggs I, Leggs II, and Martin – together – encompass and address the present allegations in their entirety.

d. Plaintiffs' Response

First, Plaintiffs argue that the allegations contained in their FAC are sufficient to survive a motion under Rule 12(b)(6). According to Plaintiffs, their complaint contains "specific factual allegations supported by affidavits and documentary evidence" and alleges that "all the Defendants, which includes Romulus and Ondejko, have participated in the same conspiracy" (emphasis in original).

Additionally, Plaintiffs contend that summary judgment in favor of defendants on the conspiracy claim would be improper. Plaintiffs devote nine pages of their brief (which is a total of 52 pages long) to listing various "evidence" which Plaintiffs believe precludes summary judgment. See Pls.' Br. at 33-41. The evidence on which Plaintiffs rely includes the following:

- The equitable sharing agreement itself, which Plaintiffs believe improperly "seeks ways to forfeit $1.6 million" and "looks forward to the seizure of other funds and property." Plaintiffs also state that "Ondejko . . . suggests a 'racketeering and conspiracy' investigation, not because it is supported by any facts of wrongdoing, but as a 'foundation' for keeping the $1.6 million and seizing other property of Leggs and Hamilton" (emphasis deleted). In other words, Plaintiffs claim that "[t]he RICO and conspiracy charges were created by Ondejko solely as a means to keep the money" (emphasis deleted).

- The expert report of Michael Levine, who describes the equitable sharing agreement as a "sham document whose main purpose is in reality the dividing of ill-gotten gains from an illegal act" and as an agreement that is "directly contrary to other agreements" inasmuch as equitable sharing agreements usually "set forth federal and/or state

statutes under which said asset seizures would be made." Levine also posits that the Leggs Lounge investigation "became a 'racketeering' investigation only with the discovery of the money."

- The deposition testimony of VBT Police Chief Elg, who answered "yes" when asked if it is "unusual for someone in law enforcement to propose a charge of some crime to justify the keeping of seized assets after-the-fact rather than before the investigation is done?" Elg Dep. at p. 30.

Moreover, Plaintiffs emphasize two additional facts, both of which they believe are material and therefore preclude summary judgment in this case. First, Plaintiffs emphasize that Kelley – who is not a police officer – appeared at the scene of Leggs after the execution of the search warrant (i.e., while police officers were investigating). Plaintiffs assert that Kelley's presence at Leggs while police officers were investigating somehow evidences his role in a conspiracy. As explained by Plaintiffs in their brief,

> Kelley essentially appointed himself an undercover officer in personally investigating whether the "anti-nudity" ordinance was being followed by Leggs. He later personally appeared at the

> execution of the search warrants against Leggs on May 3, 2002 allegedly to "take photographs of behind-the-scenes areas of Leggs." Kelley testified that he had never appeared at the police search before and that he appeared because he "was just curious."

(emphasis in original) (citations to the record omitted). On the other hand, Plaintiffs cite Abdilla's deposition testimony to the effect Kelley was called to the scene "for building issues." See Abdilla Dep. at p. 23. Plaintiffs claim that the conflicting testimony of Kelley and Abdilla as to why Kelley was present is evidence of a conspiracy. Moreover, Kelley's presence at Leggs on the day of the raid was not documented in any police reports. Plaintiffs argue that this fact further supports their conspiracy claim.

Plaintiffs also make much of the fact that Keele, a VBT detective who participated in the Leggs raid, told patrons and employees of Leggs that officers were investigating a "homicide" despite knowing from the autopsy report that Cable's death had been classified by the coroner as "natural."

3. Discussion

The Court agrees with defendants and will grant summary judgment in their favor on Plaintiffs'

conspiracy claim. Plaintiffs seem to forget about the legal standard underlying a conspiracy claim. Plaintiffs must offer evidence of "an agreement between two or more persons to injure [them] by unlawful action." Hooks, 771 F.2d at 943-944 (emphasis added). Here, Plaintiffs offer no evidence of an agreement between Romulus and VBT to engage in unlawful action. The equitable sharing agreement is not an illegal agreement. The agreement merely addresses how the $1.6 million and any money recovered subsequently will be distributed in the event that Romulus and VBT ever become lawfully entitled to it under Michigan law.[10]

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[10]The relevant Michigan statute reads, in pertinent part, as follows:

> When property is forfeited. . . , the unit of government that seized. .. the property may sell the property . . . and may dispose of the proceeds and any money. . . that is forfeited pursuant to this chapter in the following order of priority:
>
> > (a) Pay any outstanding security interest of a secured party who did not have prior knowledge of, or consent to the commission of, the crime.
> >
> > (b) Satisfy any order of restitution in the prosecution for the crime.

In any case, Plaintiffs admit that the money seized during the raid was returned. "[A] conspiracy is actionable only if the overt acts done pursuant to the

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> (c) Pay the claim of each person who shows that he or she is a victim of the crime to the extent that the claim is not covered by an order of restitution.
>
> (d) Pay any outstanding lien against the property that has been imposed by a governmental unit.
>
> (e) Pay the proper expenses of the proceedings for forfeiture and sale, including, but not limited to, expenses incurred during the seizure process and expenses for maintaining custody of the property, advertising, and court costs.
>
> (f) The balance remaining after the payment of restitution, the claims of victims, outstanding liens, and expenses shall be distributed by the court having jurisdiction over the forfeiture proceedings to the unit or units of government substantially involved in effecting the forfeiture.

Mich. Compo Laws § 600.4708. Thus, Michigan law-specifically, subsection (f) above-contemplates that VBT and Romulus may be entitled to some or all of the money seized.

common design proximately cause damage to the party bringing the action." 16 Am. Jur. 2d Conspiracy § 53. Here, Plaintiffs have not established any cognizable damages arising from the seizure of property sufficient to sustain a conspiracy claim.

Plaintiffs' other arguments rely on facts that are immaterial. For example, as explained above, Abdilla testified that Kelley was present to address "building issues." Kelley, on the other hand, testified that he was present out of curiosity. As an initial matter, the testimony of Kelley and Abdilla is not necessarily inconsistent because Kelley was not specifically asked whether he was present in connection with building issues. In any case, Plaintiffs have not explained why this matters, i.e., how this alleged inconsistency in any way evidences a conspiracy. Nor is it clear how Kelley's presence at the raid – for whatever reason – would further the conspiracy.

The same is true of the fact that Keele told Leggs' patrons and employees that police were investigating a "homicide." The uncontroverted fact is that police were investigating a claim that Cable's body had been tampered with after his death. Keele's use of the word "homicide" to describe this investigation, while imprecise, does not constitute

evidence that Keele was involved in a conspiracy to put Leggs out of business.

Finally, the Court notes that Plaintiffs' conspiracy claims against the Romulus Defendants are foreclosed by the deposition testimony reproduced on pages 20-21, above. Hamilton and his sons essentially admit that they have no evidence of any conspiracy involving the Romulus Defendants. Plaintiffs cannot maintain their conspiracy claim against the Romulus Defendants in light of this testimony.[11]

C. 42 U.S.C. 1985(2)

1. Law

Generally, "42 U.S.C. § 1985 provides a private cause of action for conspiracy to interfere with civil rights." Molnar v. Care House, 574 F. Supp. 2d 772, 787 (E.D. Mich.2008). Specifically, § 1985(2) states as follows:

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[11]The Court declines to dispose of Plaintiffs' conspiracy claim on res judicata grounds, as the VBT Defendants urge, because it has previously held in this matter that "the dismissal of the [Martin] case, so far as the Court can tell, does not appear to be an adjudication on the merits sufficient to invoke res judicata." See Dkt. 157.

Moreover, the Court need not address the Romulus Defendants' argument that all claims against Ondejko are time-barred because it finds Defendants' other arguments persuasive.

> If two or more persons. . . conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws.

42 U.S.C. § 1985(2).

The first clause of § 1985(2) "prohibits conspiracies to influence parties, witness, or jurors in federal court proceedings." Fox v. Mich. State Police Dep't, 2006 WL 456008, *3 (6th Cir. Feb. 24, 2006). "The second clause of § 1985(2) creates a cause of action against 'two or more persons' who 'conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws. . ..' Dallas v. Holmes, 2005 WL 1313801, *6 n.5 (6th Cir. May 12, 2005) (citing 42 U.S.C. § 1985(2)). "Under this clause . . . a plaintiff must demonstrate that there was 'some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action.'" Id. (citing Kush v. Rutledge, 460 U.S. 719, 726 (1983)).

2. The Parties' Arguments

a. Plaintiffs' Claims

Plaintiffs assert claims under § 1985(2) against the Romulus Defendants as follows:

> 309. That with the filing of the complaint in December of 2001, law enforcement officers of the City of Romulus have sought, contrary to 42

> U.S.C. § 1985(2), to obstruct justice and intimidate witnesses and parties.
>
> 310. Police officers of the City of Romulus have and are approaching dancers and patrons and are intimidating same so as to force the dancers or patrons to testify in favor of the respective units of government and the Defendants associated therewith, and/or to refrain from testifying on behalf of Hamilton or the Plaintiff corporations and to deprive Hamilton and the corporations of equal protection of the law.

FAC at ¶¶ 309-310.

Additionally, Plaintiffs assert § 1985(2) claims against the VBT Defendants as follows:

> 276. That with the filing of the complaint in December of 2001, law enforcement officers of the Township of Van Buren have sought, contrary to 42 U.S.C. 1985 (2), to obstruct justice and intimidate witnesses and parties.
>
> 277. Police officers of the Township of Van Buren have and are approaching dancers and patrons and are intimidating same so as to force the dancers or patrons to testify in favor of the respective units of government and

> the Defendants associated therewith, and/or to refrain from testifying on behalf of Hamilton or the Plaintiff corporations and to deprive Hamilton and the corporations of equal protection of the law.
>
> 278. The conduct of the Van Buren Defendants, in particular the law enforcement arms of Defendants, to intimidate witnesses and obstruct justice, will continue if they are not restrained and it will become impossible for Plaintiffs to present their case to this Court and Plaintiffs will be irreparably harmed as will the cause of justice and an injunction is necessary to prohibit Defendants from further harassment, intimidation and obstruction.

FAC,m 276-287.

b. The Position of the Romulus Defendants and the VBT Defendants

The Romulus Defendants argue that Plaintiffs § 1985(2) claim fails for several reasons. First, the Romulus Defendants assert that Plaintiffs lack standing to bring a claim under § 1985(2) on behalf of dancers and patrons who are not before the Court.

Further, the Romulus Defendants contend that Plaintiffs fail to state a plausible claim under §

1985(2) because Plaintiffs fail to allege a requisite element of the cause of action, namely, a conspiracy between two or more persons to conspire for the purpose of obstructing justice. The Romulus Defendants also argue that they are entitled to summary judgment on Plaintiffs' § 1985(2) claim because Plaintiffs' offer no evidence in support of the claim. In particular, the Romulus Defendants state that "there is no evidence that Ondejko and/or any other representative from Romulus engaged in an illegal conspiracy, let alone one which involved a defined 'meeting of the minds' to deter witnesses by 'force, intimidation or threat' from testifying on behalf of Hamilton or any of the corporate Plaintiffs."

The VBT Defendants argue that Plaintiffs' § 1985(2) is barred by the doctrine of res judicata. The VBT Defendants further assert that, inasmuch as Plaintiffs' § 1985(2) is premised upon the equitable sharing agreement between Romulus and VBT, the claim fails because there is nothing improper about that agreement. As stated by the VBT Defendants, "th[e] Agreement is commonplace, and, as the Court surely knows, it is a sign of good police work."

The VBT Defendants also contend that Plaintiffs' § 1985(2) claims fail because Plaintiffs'

allegations are conclusory and are not supported by any evidence.

Finally, both the Romulus Defendants and the VBT Defendants argue that Plaintiffs's § 1985(2) claims fail because they have not produced evidence of, or even alleged, a discriminatory animus as required to sustain a claim under the second sentence of § 1985(2).

c. Plaintiffs' Response

With regard to Defendants' standing argument, Plaintiffs argue that they have standing because they were economically harmed by the alleged intimidation and harassment of their dancers and patrons. With regard to Defendants' argument that Plaintiffs have failed to state a plausible § 1985(2) claim, Plaintiffs state that they have sufficiently alleged the elements of a §1985(2) claim. Finally, with regard to Defendants' contention that summary judgment is appropriate in their favor on the § 1985(2) claim, Plaintiffs argue that the equitable sharing agreement between Romulus and VBT somehow constitutes evidence relevant to their § 1985(2) claim against the Romulus Defendants.

3. Discussion

Plaintiffs' § 1985(2) claims against the Romulus Defendants and VBT Defendants are devoid

of any arguable merit. Putting aside the Romulus Defendants' arguments relating to standing, Plaintiffs offer no evidence – none at all – of any conspiracy involving the Romulus Defendants or the VBT Defendants "to influence parties, witness, or jurors in federal court proceedings" or to imped[e], hinder[], obstruct[], or defeat[] . . . the due course of justice." In particular, the record contains no testimony from any individuals who were allegedly influenced, nor does it contain any testimony or other evidence to the effect that defendants are responsible for obstructing justice. Although Plaintiffs make very bald statements in their FAC, they provide no evidence whatsoever in support of those statements.

Moreover, the deposition testimony described below strongly supports, if not compels, the conclusion that their § 1985(2) claims fail against the Romulus Defendants. See John Hamilton Dep. at pp. 42-43 (testifying that he knows of no facts supporting a claim that anyone from the City of Romulus harassed or intimidated Legg's patrons or dancers); Michael Hamilton Dep. at p. 73 (testifying that he does not know who Ondejko is and is unaware of any steps taken by anyone associated with the City of Romulus to put him, his father, or his brother out of business); John Hamilton, Jr. Dep. at pp. 25-27

(testifying that he does know anyone from the City of Romulus and does not have personal knowledge of any of the allegations set forth in the FAC); Jeremy Hamilton Dep. at pp. 36-37 (testifying that he has no facts supporting a claim that anyone from Romulus and/or Ondejko harassed Legg's patrons, employees, or dancers at any of the bars involved in this case).

Finally, to the extent that Plaintiffs' claims are brought under the second clause of § 1985(2), Plaintiffs fail to so much as mention the requirement that Defendants' actions be motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus," see Kush, 460 U.S. at 726, nor do Plaintiffs allege membership in a protected class or discrimination based on such membership. Plaintiffs' § 1985(2) claim is tenuous at best and frivolous at worst and summary judgment will therefore be granted in favor of the Romulus Defendants and the VBT Defendants on the claim

D. Tortuous Interference with a Business Relationship

1. Law

Under Michigan law, plaintiffs must show the following elements to establish a prima facie case of tortuous interference with a business relationship:

> (1) the existence of a valid business relation (not necessarily evidenced by an enforceable contract) or expectancy;
>
> (2) knowledge of the relationship or expectancy on the part of the defendant interferer;
>
> (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; and
>
> (4) resulting damage to the party whose relationship or expectancy has been disrupted.

Wausau Underwriters Ins. Co. v. Vulcan Dev" Inc., 323 F.3d 396, 404 (6th Cir. 2003) (internal citations omitted).

"The third element requires more than just purposeful or knowing behavior on the part of the defendant." Wausau, 323 F.3d at 404 (internal citations omitted). "The plaintiff must also allege that the [intentional] interference was either (1) a per se wrongful act or (2) a lawful act done 'with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another.'" Id. (quoting Feldman v. Green, 360 N.W.2d

881, 891 (Mich. App. 1984)) (additional citations omitted).

"Further, to establish that a lawful act was done with malice and without justification, the plaintiff must demonstrate, with specificity, affirmative acts by the defendant that corroborate the improper motive of the interference." Erickson's, 2007 WL 62609 at *6 (quoting Mino v. Clio Sch. Dist., 661 N.W.2d 586, 597 (Mich. App. 2003)). Particularly, "'[w]here the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference.'" Wausau, 323 F.3d at 404 (quoting BPS Clinical Labs v. Blue Cross & Blue Shield of Mich., 552 N.W.2d 919, 925 (Mich. App.1996)).

2. The Parties' Arguments

a. Plaintiffs' Claims

Plaintiffs assert tortuous interference claims against the VBT Defendants as follows:

> 295. At all times mentioned herein, Legg's had an advantageous business relationship with its customers of whichDefendants were well aware. Defendants have intentionally interfered with that advantageous business relationship by causing customers to vacate the premises, on

> repeated occasions, while the police were investigating either (1) a purported "homicide" or (2) narcotics or (3) prostitution, none of which were true and only a ruse for seizing evidence relating to Hamilton's and Legg's complaint against Van Buren Township.

FAC at ¶ 295. Plaintiffs assert tortuous interference claims against the Romulus Defendants as follows:

> 313. At all times mentioned herein, Plaintiff, Leggs, had an advantageous business relationship with its customers of which Defendants were well aware, particularly after 20 plus years of business and Defendants intentionally interfered with that advantageous business relationship by harassing customers and dancers, causing customers to vacate the premises and by issuing the Complaint, based upon false evidence, to cause Leggs to lose further business knowing that Leggs expected to remain in business and to continue to attract its regular customers.

FAC at ¶ 313.

b. The Position of the Romulus Defendants and the VBT Defendants

The Romulus Defendants argue that Plaintiffs' tortuous interference claim fails because there is no evidence of a "per se wrongful act" or that the Romulus Defendants acted with malice for the purpose of invading Plaintiffs' business relationships. The VBT Defendants assert essentially the same argument. Specifically, the VBT Defendants contend that Plaintiffs' tortuous interference claim is not cognizable against them because the alleged interference occurred during the lawful execution of a valid search warrant. Thus, the VBT Defendants assert that the purpose could not have been to interfere with Plaintiffs' business but rather to pursue a criminal investigation into the suspicious death of a Leggs customer. According to the VBT Defendants, Plaintiffs' allegation that the criminal investigation was "only a ruse" is "a conclusory statement of the highest order without a shred of substantiation."

c. Plaintiffs' Response

Plaintiffs, on the other hand, cite the expert report of their "damages expert," Kenneth Landini, CPA, which, "sets forth millions [of] dollars of

damages caused by Defendants actions towards Leggs Lounge." Plaintiffs further state that "Leggs operates now only as a 'juice bar' offering semi-topless entertainment" and that "[t]he decrease in business alone establishes an interference with business."

3. Discussion

As discussed above, Plaintiffs must demonstrate that the Romulus Defendants and/or the VBT Defendants either committed a "per se wrongful act" or "a lawful act done 'with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another.'" See Wausau, 323 F.3d at 404 (quoting Feldman, 360 N.W.2d at 891). Plaintiffs have not made this showing, nor could they on these facts. The incident causing the alleged interference – the May 3,2002 raid at Leggs – was conducted pursuant to a valid search warrant. The Romulus Defendants and the VBT Defendants were investigating reported criminal activity at Leggs. Accordingly, the raid was not "a per se wrongful act" or "a lawful act done 'with malice and unjustified in law'"; rather, it was just the opposite - a lawful act authorized by a judge (i.e., justified in law).

E. Conversion

Plaintiffs assert a conversion claim against the VBT Defendants. "Under Michigan law, conversion is defined generally as 'any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein.'" Murray Hill Publ'ns. Inc. v. ABC Commc'ns. Inc., 264 F.3d 622, 637-38 (6th Cir. 2001) (emphasis added) (quoting Sarver v. Detroit Edison Co., 571 N.W.2d 759, 761 (Mich. App.1997)).

The factual basis underlying Plaintiffs' conversion claim, as described by Plaintiffs in their FAC, is as follows:

> 282. Kelley and a private detective retained by Van Buren Township entered Legg's Lounge with a hidden television camera, taking pictures of dancers and Legg's property, without the consent of the dancers, and have published this video.
>
> 283. Under color of law, Van Buren Township, Bryce Kelley and Van Buren Township police officers have taken the safe and 1.6 million dollars in cash, computers and other records from Legg's, under the ruse of a

> criminal investigation, which was in fact an attempt to illegally seize and take evidence in the possession of Billy Martin, manager of Legg's.
>
> 284. Van Buren Township, Bryce Kelley and the Van Buren Township police officers initially refused to return the property and have destroyed the safe.
>
> 285. Defendants converted Plaintiffs' property for their own use and have exercised wrongful dominion over Plaintiffs' property without Plaintiffs' authorization or consent and upon demand refused to return Plaintiffs' property and all copies that may have been made of the tape.

FAC at ¶¶ 282-285.

Plaintiffs' conversation claim, inasmuch as it stems from allegations that property was unlawfully seized during the May 3,2002 raid, is not cognizable for the reasons stated above. Namely, the raid was conducted pursuant to a valid search warrant and the

property was seized lawfully. Therefore, Plaintiffs cannot show that Defendants "wrongfully exerted" domain over their property.

F. Taking

Plaintiffs assert a takings claim against the VBT Defendants. As the parties do not discuss any law relating to this claim, the Court is unsure as to what cause of action is intended. So far as the Court can tell, Plaintiffs are alleging a taking in the Fifth Amendment sense.

In their FAC, Plaintiffs allege the following in connection with their takings claim:

> 289. The purpose of Kelley, Abdilla and the unknown law enforcement officers of Van Buren Township, together with Ondejko and the City of Romulus, acting under color of law, of harassment and driving away customers and dancers, is to drive Hamilton and Legg's out of business, causing impairment to Hamilton's financial interest in Legg's and depriving Hamilton of a vested property interest

without due process and to seize Hamilton's money through unlawful means.

290. The unconstitutional ordinance adopted by Van Buren Township at the encouragement of Kelley was aimed directly at Hamilton and for the sole purpose of putting Hamilton, and no one else, out of business, although Legg's never had a liquor violation, had been a major contributor to the welfare of the community and for a business that serves alcoholic beverages, had maintained a good to excellent record in terms of disturbances.

291. As set forth above, in the home of Billy Martin, law enforcement officers discovered a safe that was subsequently unlawfully forced open and 1.6 million dollars plus of John Hamilton money was seized.

292. The object of the Van Buren Township officers in the manufactured raid on Legg's on May 3, 2002 was in fact to seize, confiscate and take any evidence

> that Hamilton or Legg's intended to use in this litigation. The thrust of the search warrant was for "videotapes" which Billy Martin had mentioned may contain incriminating evidence in support of Legg's complaint filed with this Court.
>
> 293. As set forth above, after the filing of the complaint and first amended complaint, Bryce Kelley and the officers of Van Buren Township, upon learning that there may be videotape evidence that would support Hamilton's claim of violation of civil rights and conspiracy to deprive Hamilton of civil rights and to interfere with his business interests, fabricated a cause tojustify a raid on Legg's on May 3, 2002 and to conduct a search and seizure of Billy Martin's home.

FAC at ¶¶ 289-293.

The Court agrees with Defendants that this claim appears to be "nothing more than the conversion claim recast." In any case, the claim is subject to dismissal for the reasons stated above and

for the reasons stated by the VBT Defendants in their reply brief. Mainly, (1) the "unconstitutional ordinance" referenced in paragraph 290 of the FAC, reproduced above, has been declared – in the words of the Leggs I court – "without constitutional or legal infirmity" and (2) the raid on Leggs, and the seizure of property, was lawful.

V. Conclusion

For the reasons stated above:

1. The First Amendment claims asserted by the individual plaintiffs are DISMISSED.

2. All claims against the John Doe Enforcement Officers are DISMISSED.

3. The Van Buren Defendants' Motion for Summary Judgment is GRANTED. All claims against Van Buren Township, Abdilla, and Kelley are DISMISSED.

4. The Romulus Defendants' Motion for Summary Judgment is GRANTED. All claims against the City of Romulus and Ondejko are DISMISSED.

SO ORDERED.

Dated: August 18, 2009

s/Avern Cohn
AVERN COHN
UNITEDSTATES
DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, August 18, 2009, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager,
(313) 234-5160

42 USC §1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.